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Remarks and Instructions

Remarks:

All LAG Manual and CD Holders:

To download the September 2002 LAG manual changes in their entirety electronically, go to:
<http://www.wsdot.wa.gov/TA/Operations/LAG/LAGHP.HTM>. This site also includes an option to download just the September 2002 revisions.

For interim LAG, GSP and other updates for local agencies, consider subscribing to our LAGG list serve. This is a great resource for your agencies LAG manual contacts.
<http://lists.wsdot.wa.gov/guest/RemoteListSummary/LAGG L>.

The final rule to incorporate the latest edition of the AASHTO Publication "A Policy on Geometric Design of Highways and Streets" (2001 Green Book) into 23 CFR 625 was published in the Federal Register on February 12, 2002. References in the LAG Manual have been updated reflecting the 2001 edition. Local agencies may immediately begin to use the 2001 edition. Projects advertised on or before April 1, 2003 may be designed in accordance with the 1996 edition. Projects advertised after April 1, 2003 must be designed in accordance with the 2001 edition.

The Local Agency Environmental Classification Summary, Form 140-100 EF, has been revised. Local agencies should use the form included in the September 2002 LAG manual revisions and CD for their NEPA documentation. Old versions of the ECS form will not be accepted after December 1, 2002.

Local agencies have been instructed to keep a copy of the January 2000 Engineering Publications CD and a hard copy of the WSDOT Construction Manual Chapter 9. As time passes we are starting to see a problem with lost CD's and recycled hardcopies. Chapter 9 of the 1997 Construction Manual has been included on the September 2002 Engineering Publications CD. This is only an interim step. We are drafting additions to the LAG manual that address the use of acceptance and assurance procedures in combination with current WSDOT Construction Manual procedures. You will be notified as changes occur.

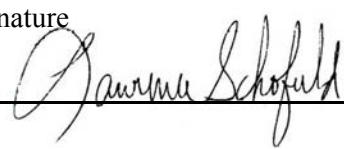
If you have LAG **contact changes**, (either additional or replacement contacts), it would be appreciated if you would complete and return the "Local Agency Guidelines, Request Form and LAG Contact Update". This will enable us to have a correct listing of current LAG manual holders and CD contacts, along with who to notify of updates.

If you have questions with LAG manual content, please contact Ron Pate at paterd@wsdot.wa.gov or (360) 705-7383.

Instructions:

Page numbers and corresponding sheet-counts are given in the table below to indicate portions of the *Local Agency Guideline* that are to be removed and inserted to accomplish this revision.

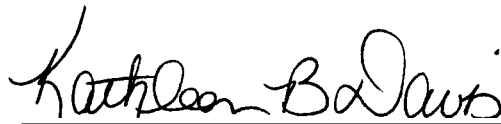
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This manual was published to provide local agencies with statewide policies and standards to follow when using Federal Highway Administration (FHWA) funds for transportation projects. Considerable effort has been made to provide guidance on how to accomplish the work and document the results, and to incorporate the flexibility options provided by the Transportation Equity Act for the 21st Century (TEA-21).

Numerous committees are involved in this manual, directly and indirectly. A special thanks to the City and County Design Standards and Local Agency Guidelines (LAG) Committee members, and active participation by the Consultant Engineers Council of Washington, the Washington State Department of Transportation (WSDOT) advisors, and the FHWA.

Updating the manual is a continuing process. The LAG Committee will periodically meet to consider changes and issue revisions. Questions, observations, and recommendations are invited. The document comment page is provided to encourage comments. Please use it to transmit comments, including marked copies of manual pages, to WSDOT Headquarters Highways and Local Programs.



Kathleen B. Davis

Director

Headquarters Highways and Local Programs

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Chapter 53 Project Closure

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53.2	Closure	53-1	Feb. 2002
53.3	Project Management Review	53-1	Feb. 2002
53.4	Financial and Compliance Audit	53-2	Feb. 2002
53.5	Appendixes	53-2	Feb. 2002
53.51	Local Agency Documentation Review Checklist	53-3 to 5	Feb. 2002
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Date

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63.2	Types of Eligible Projects	63-1	Sept. 2002
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63.5	Projects Within Interstate Rights-of-Way	63-1	Sept. 2002
63.6	Project Approval Actions	63-2	July 2001
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63.8	Appendixes	63-2	July 2001
63.81	List of Local Agency NHS Routes	63-3	July 2001
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Chapter 64	Bridge Inspections		
64.1	General Discussion	64-1	June 2000
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64.5	Bridge Load Ratings	64-1	June 2000
64.6	Bridge Scour Analysis	64-1	June 2000
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64.8	Major Bridge Repair Reports	64-1	June 2000
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Chapter 65	Management Systems		
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65.3	Management Systems	65-1	July 1999
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		65-3 and 4	July 1999

List of Forms

1 July 2001

Acronyms and Glossary of Terms

1 June 2000

Acronyms

1 June 2000

Glossary of Terms

5 Feb. 2002

Index

1 June 2000

Certification Acceptance Qualification Agreement

AGENCY _____ AGENCY NO. _____

The agency agrees to comply with the following requirements when developing all Federal Highway Administration (FHWA) projects under _____ CA status.

1. Adherence to the *Local Agency Guidelines* and all policies and procedures promulgated by the Washington State Department of Transportation (WSDOT) which accomplish the policies and objectives set forth in Title 23, U.S. Code, Highways, and the regulations issued pursuant thereto.
2. The overall approval authorities and conditions will be as follows:
 - a. The project prospectus will be reviewed and approved by the following official.

Position Title Only
 - b. The local agency agreement will be reviewed and approved by the following official or officials.

Position Title Only
 - c. The designs and environmental documents will be reviewed and approved by the following state of Washington registered Professional Civil Engineer.

Position Title Only
 - d. The hearing's findings (if required) will be reviewed and approved by the following official or officials.

Position Title or Titles Only
 - e. The contract plans, specifications and estimate of cost will be reviewed and approved by the following state of Washington registered Professional Engineer.

Position Title or Titles Only
 - f. Agreements will be signed by the following responsible local official:
 - (1) Railroad _____
Position Title Only
 - (2) Utility _____
Position Title Only
 - (3) Consultant _____
Position Title Only
 - (4) Technical Services _____
Position Title Only
 - g. The award of contract will be signed by the following responsible local official.

Position Title Only
 - h. All projects will be constructed in conformance with the Washington State Department of Transportation/American Public Works Association (WSDOT/APWA) current *Standard Specifications for Road, Bridge, and Municipal Construction* and such specifications that modify these specifications as appropriate. Multimodal enhancement projects shall be constructed in conformance with applicable state and local codes.

- i. The contract administration will be supervised by the following state of Washington registered Professional Civil Engineer.

Position Title Only

- j. Construction administration and material sampling and testing will be accomplished in accordance with the WSDOT *Construction Manual* and the *Local Agency Guidelines*.
3. The agency agrees that they have the means to provide adequate expertise and will have support staff available to perform the functions being subdelegated. The support staff may include consultant or state services.
4. The agency agrees that the signature on each project prospectus and local agency agreement will be consistent with section 2 above.
5. All projects under Certification Acceptance shall be available for review by the FHWA and the state at any time and all project documents shall be retained and available for inspection during the plan development and construction stages and for a three year period following acceptance of the project by WSDOT.
6. Approval of the local agency certification by the Assistant Secretary for Highways and Local Programs may be rescinded at any time upon local agency request or if, in the opinion of the Assistant Secretary for Highways and Local Programs, it is necessary to do so. The rescission may be applied to all or part of the programs or projects approved in the local agency certification.

Mayor or Chairman

Date

**WASHINGTON STATE DEPARTMENT
OF TRANSPORTATION**

Approved By:

Assistant Secretary for Highways and Local Programs

Date

Environmental Impact Statement (Chapter 24)

<u>Initials</u>	<u>Date or N/A</u>	
_____	_____	Publish notice of intent
_____	_____	Submit interdisciplinary team recommendations to project manager
_____	_____	Develop public involvement plan
_____	_____	Develop data inventory and evaluation from interdisciplinary team
_____	_____	Project manager reviews preliminary discipline reports
_____	_____	Submit preliminary Draft Environmental Impact Statement to Assistant Secretary for Highways and Local Programs
_____	_____	Receive Washington State Department of Transportation comments on above
_____	_____	Submit camera-ready Draft Environmental Impact Statement to Regional Highways and Local Programs Engineer for signature
_____	_____	Receive approval to print Draft Environmental Impact Statement
_____	_____	Submit circulation copies to Regional Highways and Local Programs Engineer
_____	_____	Publish in Federal Register (minimum 45 days comment period)
_____	_____	For state route, obtain Washington State Department of Transportation approval before advertising for public hearing
_____	_____	Advertise opportunity for public hearing
_____	_____	Submit preliminary Final Environmental Impact Statement and draft record of decision to Regional Highways and Local Programs Engineer
_____	_____	Receive comments from Assistant Secretary for Highways and Local Programs
_____	_____	Receive approval to print Final Environmental Impact Statement
_____	_____	Submit final Environmental Impact Statement to Regional Highways and Local Programs Engineer
_____	_____	Receive FHWA approval
_____	_____	Circulate final Environmental Impact Statement
_____	_____	Final record of decision approved by FHWA

Location and Design Approval (Chapter 43)

<u>Initials</u>	<u>Date or N/A</u>	
_____	_____	Submit project prospectus
_____	_____	Submit design report
_____	_____	Submit pavement design criteria
_____	_____	Meet public hearing requirements
_____	_____	Meet environmental requirements
_____	_____	Concurrence with BA effect determinations
_____	_____	ECS approval by FHWA
_____	_____	For major bridge project, submit type, size, and location study to Regional Highways and Local Programs Engineer
_____	_____	Obtain FHWA approval of the type, size, and location study
_____	_____	For traffic signal projects, submit warrants for signalization to Regional Highways and Local Programs Engineer
_____	_____	Obtain location and design approval
_____	_____	Publish design approval notice

Right-of-Way Funding and Acquisition

Funding (Chapter 14)

_____	_____	Project in STIP
_____	_____	Complete design hearing requirements
_____	_____	Approve right-of-way plan
_____	_____	Submit right-of-way relocation plan (if required) to Regional Highways and Local Programs Engineer
_____	_____	Submit right-of-way acquisition plan, right-of-way project funding estimate or true cost estimate, supplement to Local Agency Agreement and FHWA approval of environmental documents, to Regional Highways and Local Programs Engineer with request for right-of-way funds
_____	_____	Receive authorization to acquire R/W from Assistant Secretary for Highways and Local Programs

Acquisition (Chapter 25)

I _____	_____	Acquisition procedures approved by <u>Director of</u> Highways and Local Programs
_____	_____	Set up documentation file for each parcel
_____	_____	Set up commitment file
		<u>Appraisal:</u>
_____	_____	Appraiser meets WSDOT criteria
_____	_____	Give landowner opportunity to accompany appraiser
_____	_____	Signed appraiser certification in file

<u>Initials</u>	<u>Date or N/A</u>		
		<u>Appraisal Review:</u>	
_____	_____	Appraisal reviewer meets WSDOT criteria	
_____	_____	Date of value determination precedes commencement of negotiations	
_____	_____	Just compensation set by agency	
_____	_____	Signed review appraiser certification in file	
		<u>Negotiations:</u>	
_____	_____	Prepare diary of all owner contacts	
_____	_____	Give owner written statement of just compensation (<u>Offer Letter</u>)	
_____	_____	Ensure that settlement contains construction clauses	
_____	_____	Obtain evidence of clear title	
_____	_____	<u>Negotiator disclaimer statement in file</u>	
		<u>Relocation Plan:</u>	
_____	_____	Approved by WSDOT	
_____	_____	Send written notice to vacate	
_____	_____	Check for filed appeal against local agency offer	
_____	_____	Complete relocation	
_____	_____	Complete acquisition	
_____	_____	Complete administrative settlement documentation	
_____	_____	Place a copy of deeds in file	
_____	_____	Send:	
		_____ Letter of certification	
		_____ LPA coordinator conducts certification review	
		_____ WSDOT's certification by <u>Real Estate Services, Assistant Director Local Agency Projects</u>	

Plans, Specifications, and Estimates (Chapters 24, 26, 27, and 44)

<u>Initials</u>	<u>Date or N/A</u>	
		Review commitment and correspondence file
		When applicable, secure the following permits or interagency coordination:
		Airport roadway clearance from FAA
		Coastal zone management compliance from DOE
		For cultural, archeological, or historic sites SHPO contacted
		Obtain concurrence letters for environmental determination
		Request updated ESA species lists every six months
		When waters modified or controlled, USFWS and State Department of Fisheries and Wildlife consulted
		When stream is affected, permit from DOE
		For timber supporting land, permit from DNR
		When construction might reduce water quality, contact DOE
		For quarries of <u>2 acres (0.81 ha)</u> and <u>10,000 tons (9 091 metric tons)</u> or more DNR contacted
		Waters/wetlands — Army Corps of Engineers contacted
		For navigable waterways, permit from Coast Guard obtained
		If wetlands are affected, U.S. Fish and Wildlife Service or National Marine Fisheries Services contacted
		Utility agreement obtained
		Railway agreement(s) obtained
		PS&E completed:
		Vicinity map
		Summary of quantities
		Pit, quarry, stockpile, and waste sites
		Reclamation plans
		Roadway sections
		Plans/profiles
		Utility
		Structure notes
		Signing
		Illumination
		Bridge plans
		Traffic control
		Standard plans
		Sheets numbered and dated
		Each sheet signed and stamped by Professional Engineer
		Bridge plans, design calculations, and soil report to Regional Highways and Local Programs Engineer (State Ad and Award only)

Project Completion (Chapter 52)

Initials	Date or N/A	
_____	_____	Prefinal inspection by local agency and contractor completed
_____	_____	Final inspection by local construction agency and contractor completed
_____	_____	Report of Non-American Made Material (<u>GSP 0605.GR1</u>) received from contractor
_____	_____	Notice of completion sent to contractor
_____	_____	Extension of time request with justification received from contractor
_____	_____	Extension of time granted, _____ days
_____	_____	Extension of time refused, _____ days
_____	_____	_____ liquidated damages
_____	_____	Letter sent notifying contractor of assessed liquidated damages
_____	_____	Copy of completion notice requesting inspection and acceptance by WSDOT and FHWA sent to Assistant Secretary for Highways and Local Programs
_____	_____	Contractor submitted claim
_____	_____	_____ No claim submitted
_____	_____	Notice of completion to:
_____	_____	_____ Department of Labor and Industries
_____	_____	_____ Department of Revenue
_____	_____	FHWA Form 47 required for projects on NHS routes _____ Yes
_____	_____	over \$1 million _____ No
_____	_____	_____ Received from contractor
_____	_____	Received "Affidavit of Wages Paid" from contractor and subcontractors
_____	_____	Received ESA species listing for the project every six months
_____	_____	Received "Quarterly Report of Amounts Credited as DBE Participation" from contractor
_____	_____	Release received from Department of Labor and Industries
_____	_____	Release received from Department of Revenue
_____	_____	Comparison of preliminary and final quantities sent to approving authority
_____	_____	Material certification form sent to approving authority
_____	_____	Completed "Report of Contractor's Performance" for prime contractor
_____	_____	As built plan completed (to be retained indefinitely)
_____	_____	Final record book #1 completed
_____	_____	Final estimate approved by the approving authority
_____	_____	Final estimate received from contractor
_____	_____	Paid final estimate
_____	_____	Released retained percentage from escrow or mailed check to contractor

Project Closure (Chapters 23 and 53)

<u>Initials</u>	<u>Date or N/A</u>	
_____	_____	Completion letter sent to Regional Highways and Local Programs Engineer (within 15 days after project is completed)
_____	_____	Final billing sent to Regional Highways and Local Programs Engineer (within 90 days after completion)
_____	_____	Completed final field inspection by the Regional Highways and Local Programs Engineer. Deficiencies (if any) will be noted on DOT Form 140-500.
_____	_____	Resolve deficiencies found during the above field inspection
_____	_____	Informed by Regional Highways and Local Programs Engineer of WSDOT final billing approval

16:P65:DP/LAG1

Date	Form is filled out.																		
Local Agency Project Number	Limited to eight (8) alpha/numeric characters that your agency identifies.																		
Federal Employer Tax ID Number	Required. Indicate the agency's tax identification number.																		
Agency	Required. This is your agency's name.																		
Federal Program Title	Enter the program number or title from the following list: 20.205 Highway Planning and Construction 20.209 Public Land Highways Most local agency projects are 20.205.																		
Project Title	Write the project's title, as shown in TIP/STIP.																		
Project Termini	Indicate the beginning and ending limits of the section to be improved. For railway/highway grade crossing projects, show the name of the railroad involved. For intersection projects write the name of the crossroad.																		
From: To:	Indicate MP to MP or KP to KP.																		
Length of Project	Project's length in miles or kilometers.																		
Award Type	Mark the appropriate type.																		
Federal Agency	Indicate where the federal funds are coming from FHWA, etc.																		
City Number	For a city project, write the city number from Appendix 21.45.																		
County Number	Write your county number from Appendix 21.44.																		
County Name	Write the county the project is in.																		
WSDOT Region	Locate your WSDOT region number from Appendix 21.44 or 21.45.																		
Congressional District	Indicate the number of the congressional district or districts in which this project is located.																		
Legislative District	Indicate legislative district(s).																		
Urban Area Number	For projects inside urban areas, locate the appropriate urban area number from Appendix 21.46.																		
TMA/MPO/RTPO	For projects inside urban areas (population greater than 50,000), give the code which represents the MPO for your area. <table> <tr> <td><u>Code</u></td><td><u>MPO</u></td></tr> <tr> <td>BFCG</td><td>Benton-Franklin Council of Governments</td></tr> <tr> <td>RTC</td><td>Regional Transportation Council</td></tr> <tr> <td>PSRC</td><td>Puget Sound Regional Council</td></tr> <tr> <td>SRTC</td><td>Spokane Regional Transportation Council</td></tr> <tr> <td>YVCOG</td><td>Yakima Valley Conference of Governments</td></tr> <tr> <td>TRPC</td><td>Thurston Regional Planning Council</td></tr> <tr> <td>WCCOG</td><td>Whatcom County Council of Governments</td></tr> <tr> <td>CWCOG</td><td>Cowlitz-Wahkiakum Council of Governments</td></tr> </table>	<u>Code</u>	<u>MPO</u>	BFCG	Benton-Franklin Council of Governments	RTC	Regional Transportation Council	PSRC	Puget Sound Regional Council	SRTC	Spokane Regional Transportation Council	YVCOG	Yakima Valley Conference of Governments	TRPC	Thurston Regional Planning Council	WCCOG	Whatcom County Council of Governments	CWCOG	Cowlitz-Wahkiakum Council of Governments
<u>Code</u>	<u>MPO</u>																		
BFCG	Benton-Franklin Council of Governments																		
RTC	Regional Transportation Council																		
PSRC	Puget Sound Regional Council																		
SRTC	Spokane Regional Transportation Council																		
YVCOG	Yakima Valley Conference of Governments																		
TRPC	Thurston Regional Planning Council																		
WCCOG	Whatcom County Council of Governments																		
CWCOG	Cowlitz-Wahkiakum Council of Governments																		
Total Estimated Cost	Required for each phase of the project; estimate to the nearest hundred dollars.																		
Local Agency Funding	Required for each phase of the project; estimate to the nearest hundred dollars.																		
Federal Funds	Required for each phase of the project; estimate to the nearest hundred dollars.																		
Phase Start Date	Enter the month and year which expenditure for the phase will begin.																		

Description of Existing Facility

In one or two paragraphs, give a detailed description of the existing facility including but not limited to: (1) type, pavement, lane and shoulder width, horizontal and vertical alignment; and (2) condition of existing surfacing and roadway within project limits, and on adjacent sections at each end of the project. Note any substandard existing alignment and grade or other project deficiencies.

Description of Proposed Work

Check whether the project is new construction, 3-R or 2-R as described in Chapter 42. Explain the nature of the improvement proposed such as widening of existing roadway for additional lanes or left-turn channelization; or to provide signalization to an intersection. Give the purpose of the improvement, such as upgrade facility to current standards, or to remedy a hazardous situation, or reduce congestion. Indicate the major work involved, such as grading, surfacing, bridge construction, drainage, etc. Give a contact person for the project in case there are questions.

Design Approval

On all federal aid transportation projects, agencies should place location and design report in the project file before requesting approval to acquire right-of-way or the preparation of the PS&E.

A project design cannot be approved before the environmental considerations have been approved by FHWA.

In most cases, the Project Prospectus serves as the location and design report.

A CA agency Professional Engineer with the appropriate approval authority signs and dates the form, indicating design approval.

A Non-CA agency will send the form to their respective Region Local Programs Engineer for design approval.

When there is a subsequent change to the project design, an amended location-design approval is required.

Geometric Design Data

Refer to design report data and/or Chapter 42.

Accidents

Enter the required accident information in the appropriate blanks according to the following definitions.

There are three categories of accidents differentiated by increasing degrees of severity — property damage, injury, and fatal. An accident, irrespective of the number of vehicles involved or the number of persons killed or injured, is entered as one accident and defined as follows:

- a. Property Damage Accident: If there is damage to one or more vehicles or property, with no injuries and no fatalities, this equals one property damage accident.
- b. Injury Accident: If one or more persons are injured, regardless of property damage, this equals one injury accident.
- c. Fatal Accident: If one or more persons are killed regardless of property damage, this equals one fatal accident.

Examples:

1. Vehicle leaves roadway and hits utility pole, but driver is not hurt.

Category: Property Damage Acc.

2. Vehicle slows on roadway, is hit from behind and pushed into vehicle ahead. Two persons are injured.

Category: Injury Accident (two persons injured)

- | | |
|-----------------------------------|------------------------------|
| 1. Seattle and Everett | 19. Oak Harbor |
| 2. Spokane | 20. Shelton |
| 3. Vancouver | 21. Anacortes |
| 4. Pasco, Kennewick, Richland | 22. Mount Vernon, Burlington |
| 5. Yakima, Union Gap, Selah | 23. Cheney |
| 6. Olympia, Lacey, Tumwater | 24. Sunnyside |
| 7. Bremerton, Port Orchard | 25. Ephrata |
| 8. Bellingham | 26. Clarkston |
| 9. Kelso, Longview | 27. Toppenish |
| 10. Aberdeen, Cosmopolis, Hoquiam | 28. Port Townsend |
| 11. Walla Walla, College Place | 29. Tacoma |
| 12. Pullman | 30. Sedro Woolley |
| 13. Wenatchee, East Wenatchee | 31. Grandview |
| 14. Port Angeles | 32. Enumclaw |
| 15. Centralia, Chehalis | 33. Ferndale |
| 16. Camas, Washougal | 34. Lynden |
| 17. Ellensburg | 35. Otis Orchards |
| 18. Moses Lake, Grant County | |

Local Agency Federal Aid Project Prospectus



**Washington State
Department of Transportation**

Local Agency Federal Aid Project Prospectus

Prefix		Route ()		Date	
Federal Aid Project Number					
Local Agency Project Number		(WSDOT Use Only)		Federal Employer Tax ID Number	
Agency				Federal Program Title <input type="checkbox"/> 20.205 <input type="checkbox"/> 20.209 <input type="checkbox"/> Other	
Project Title					
Project Termini From				To	
From:	To:	Length of Project		Award Type <input type="checkbox"/> Local <input type="checkbox"/> Local Forces <input type="checkbox"/> State <input type="checkbox"/> Railroad	
Federal Agency <input type="checkbox"/> FHWA <input type="checkbox"/> Others		City Number	County Number	County Name	WSDOT Region
Congressional District		Legislative Districts		Urban Area Number	TMA / MPO / RTPO
Phase	Total Estimated Cost (Nearest Hundred Dollar)	Local Agency Funding (Nearest Hundred Dollar)	Federal Funds (Nearest Hundred Dollar)	Phase Start Date Month Year	
P.E.					
R/W					
Const.					
Total					
Description of Existing Facility (Existing Design and Present Condition)					
Roadway Width			Number of Lanes		
Description of Proposed Work					
<input type="checkbox"/> New Construction <input type="checkbox"/> 3-R <input type="checkbox"/> 2-R		Roadway Width		Number of Lanes	
Local Agency Contact Person		Title		Phone	
Mailing Address		City	State	Zip Code	
Design Approval		By _____ Approving Professional Engineer			
		Title _____		Date _____	

Agency	Project Title	Date
--------	---------------	------

Geometric Design Data		
Description	Through Route	Crossroad
Federal Functional Classification	<input type="checkbox"/> Urban <div style="margin-left: 20px;"> <input type="checkbox"/> Principal Arterial <input type="checkbox"/> Minor Arterial <input type="checkbox"/> Collector </div>	<input type="checkbox"/> Urban <div style="margin-left: 20px;"> <input type="checkbox"/> Principal Arterial <input type="checkbox"/> Minor Arterial <input type="checkbox"/> Collector </div>
	<input type="checkbox"/> Rural <div style="margin-left: 20px;"> <input type="checkbox"/> Major Collector <input type="checkbox"/> Minor Collector <input type="checkbox"/> Access Street/Road </div>	<input type="checkbox"/> Rural <div style="margin-left: 20px;"> <input type="checkbox"/> Major Collector <input type="checkbox"/> Minor Collector <input type="checkbox"/> Access Street/Road </div>
Terrain	<input type="checkbox"/> Flat <input type="checkbox"/> Roll <input type="checkbox"/> Mountain	<input type="checkbox"/> Flat <input type="checkbox"/> Roll <input type="checkbox"/> Mountain
Posted Speed		
Design Speed		
Existing ADT		
Design Year ADT		
Design Year		
Design Hourly Volume (DHV)		

Accident - 3 Year Experience						
Year	Property Damage Accidents	Injury Accidents		Fatal Accidents		Total Number of Accidents
		Number of Accidents	Number of Injuries	Number of Accidents	Number of Fatalities	

Performance of Work		
Preliminary Engineering Will Be Performed By	Others	Agency
	%	%
Construction Will Be Performed By	Contract	Agency
	%	%

Environmental Classification
<div style="display: flex; justify-content: space-between;"> <div> <input type="checkbox"/> Final <input type="checkbox"/> Preliminary <input type="checkbox"/> Class I - Environmental Impact Statement (EIS) <div style="margin-left: 20px;"><input type="checkbox"/> Project Involves NEPA/SEPA Section 404 Interagency Agreement</div> <input type="checkbox"/> Class III - Environmental Assessment (EA) <div style="margin-left: 20px;"><input type="checkbox"/> Project Involves NEPA/SEPA Section 404 Interagency Agreement</div> </div> <div> <input type="checkbox"/> Class II - Categorically Excluded (CE) <div style="margin-left: 20px;"><input type="checkbox"/> Projects Requiring Documentation (Documented CE)</div> </div> </div>

Environmental Considerations

Agency	Project Title	Date
--------	---------------	------

Right of Way

<input type="checkbox"/> No Right of Way Required * All construction required by the contract can be accomplished within the existing right of way.	<div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <input type="checkbox"/> Right of Way Required <input type="checkbox"/> No Relocation </div> <div style="width: 45%;"> <input type="checkbox"/> Relocation Required </div> </div>
--	---

Description of Utility Relocation or Adjustments and Existing Major Structures Involved in the Project

FAA Involvement
 Is any airport located within 3.2 kilometers (2 miles) of the proposed project?
 ☐ Yes
 ☐ No

Remarks

This project has been reviewed by the legislative body of the administration agency or agencies, or it's designee, and is not inconsistent with the agency's comprehensive plan for community development.

Date _____

Agency _____
 By _____

Mayor/Chairperson



**Washington State
Department of Transportation**

Local Agency Agreement

Agency _____

Address _____

CFDA No. 20.205
(Catalog of Federal Domestic Assistance)

Project No. _____

Agreement No. _____

For OSC WSDOT Use Only

The Local Agency having complied, or hereby agreeing to comply, with the terms and conditions set forth in (1) Title 23, U.S. Code Highways, (2) the regulations issued pursuant thereto, (3) Office of Management and Budget Circulars A-102, A-87 and A-133, (4) the policies and procedures promulgated by the Washington State Department of Transportation, and (5) the federal aid project agreement entered into between the State and Federal Government, relative to the above project, the Washington State Department of Transportation will authorize the Local Agency to proceed on the project by a separate notification. Federal funds which are to be obligated for the project may not exceed the amount shown herein on line r, column 3, without written authority by the State, subject to the approval of the Federal Highway Administration. All project costs not reimbursed by the Federal Government shall be the responsibility of the Local Agency.

Project Description

Name _____ **Length** _____

Termini _____

Description of Work

Type of Work		Estimate of Funding		
		(1) Estimated Total Project Funds	(2) Estimated Agency Funds	(3) Estimated Federal Funds
PE _____% Federal Aid Participation Ratio for PE	a. Agency			
	b. Other			
	c. Other			
	d. State			
	e. Total PE Cost Estimate (a+b+c+d)			
Right of Way _____% Federal Aid Participation Ratio for RW	f. Agency			
	g. Other			
	h. Other			
	i. State			
	j. Total R/W Cost Estimate (f+g+h+i)			
Construction _____% Federal Aid Participation Ratio for CN	k. Contract			
	l. Other			
	m. Other			
	n. Other			
	o. Agency			
	p. State			
	q. Total CN Cost Estimate (k+l+m+n+o+p)			
	r. Total Project Cost Estimate (e+j+q)			

Agency Official

By _____

Title _____

Washington State Department of Transportation

By _____

Assistant Secretary for Highways and Local Programs

Date Executed _____

Construction Method of Financing (Check Method Selected)

State Ad and Award

- ☐ Method A - Advance Payment - Agency Share of total construction cost (based on contract award)
☐ Method B - Withhold from gas tax the Agency's share of total construction cost (line 4, column 2) in the amount of

\$ _____ at \$ _____ per month for _____ months.

Local Force or Local Ad and Award

- ☐ Method C - Agency cost incurred with partial reimbursement

The Local Agency further stipulates that pursuant to said Title 23, regulations and policies and procedures, and as a condition to payment of the federal funds obligated, it accepts and will comply with the applicable provisions set forth below. Adopted by official action on

_____, _____, Resolution/Ordinance No. _____

Provisions

I. Scope of Work

The Agency shall provide all the work, labor, materials, and services necessary to perform the project which is described and set forth in detail in the "Project Description" and "Type of Work."

When the State acts for and on behalf of the Agency, the State shall be deemed an agent of the Agency and shall perform the services described and indicated in "Type of Work" on the face of this agreement, in accordance with plans and specifications as proposed by the Agency and approved by the State and the Federal Highway Administration.

When the State acts for the Agency but is not subject to the right of control by the Agency, the State shall have the right to perform the work subject to the ordinary procedures of the State and Federal Highway Administration.

II. Delegation of Authority

The State is willing to fulfill the responsibilities to the Federal Government by the administration of this project. The Agency agrees that the State shall have the full authority to carry out this administration. The State shall review, process, and approve documents required for federal aid reimbursement in accordance with federal requirements. If the State advertises and awards the contract, the State will further act for the Agency in all matters concerning the project as requested by the Agency. If the Local Agency advertises and awards the project, the State shall review the work to ensure conformity with the approved plans and specifications.

III. Project Administration

Certain types of work and services shall be provided by the State on this project as requested by the Agency and described in the Type of Work above. In addition, the State will furnish qualified personnel for the supervision and inspection of the work in progress. On Local Agency advertised and awarded projects, the supervision and inspection shall be limited to ensuring all work is in conformance with approved plans, specifications, and federal aid requirements. The salary of such engineer or other supervisor and all other salaries and costs incurred by State forces upon the project will be considered a cost thereof. All costs related to this project incurred by employees of the State in the customary manner on highway payrolls and vouchers shall be charged as costs of the project.

IV. Availability of Records

All project records in support of all costs incurred and actual expenditures kept by the Agency are to be maintained in accordance with local government accounting procedures prescribed by the Washington State Auditor's Office, the U.S. Department of Transportation, and the Washington State Department of Transportation. The records shall be open to inspection by the State and Federal Government at all reasonable times and shall be retained and made available for such inspection for a period of not less than three years from the final payment of any federal aid funds to the Agency. Copies of said records shall be furnished to the State and/or Federal Government upon request.

V. Compliance with Provisions

The Agency shall not incur any federal aid participation costs on any classification of work on this project until authorized in writing by the State for each classification. The classifications of work for projects are:

1. Preliminary engineering.
2. Right of way acquisition.
3. Project construction.

In the event that right of way acquisition, or actual construction of the road, for which preliminary engineering is undertaken is not started by the closing of the tenth fiscal year following the fiscal year in which the agreement is executed, the Agency will repay to the State the sum or sums of federal funds paid to the Agency under the terms of this agreement (see Section IX).

The Agency agrees that all stages of construction necessary to provide the initially planned complete facility within the limits of this project will conform to at least the minimum values set by approved statewide design standards applicable to this class of highways, even though such additional work is financed without federal aid participation.

The Agency agrees that on federal aid highway construction projects, the current federal aid regulations which apply to liquidated damages relative to the basis of federal participation in the project cost shall be applicable in the event the contractor fails to complete the contract within the contract time.

VI. Payment and Partial Reimbursement

The total cost of the project, including all review and engineering costs and other expenses of the State, is to be paid by the Agency and by the Federal Government. Federal funding shall be in accordance with the Transportation Equity Act for the 21st Century (TEA 21), as amended, and Office of Management and Budget circulars A-102, A-87 and A-133. The State shall not be ultimately responsible for any of the costs of the project. The Agency shall be ultimately responsible for all costs associated with the project which are not reimbursed by the Federal Government. Nothing in this agreement shall be construed as a promise by the State as to the amount or nature of federal participation in this project.

The Agency shall bill the state for federal aid project costs incurred in conformity with applicable federal and state laws. The agency shall minimize the time elapsed between receipt of federal aid funds and subsequent payment of incurred costs. Expenditures by the Local Agency for maintenance, general administration, supervision, and other overhead shall not be eligible for federal participation unless an indirect cost plan has been approved by WSDOT.

The State will pay for State incurred costs on the project. Following payment, the State shall bill the Federal Government for reimbursement of those costs eligible for federal participation to the extent that such costs are attributable and properly allocable to this project. The State shall bill the Agency for that portion of State costs which were not reimbursed by the Federal Government (see Section IX).

1. Project Construction Costs

Project construction financing will be accomplished by one of the three methods as indicated in this agreement.

Method A – The Agency will place with the State, within (20) days after the execution of the construction contract, an advance in the amount of the Agency's share of the total construction cost based on the contract award. The State will notify the Agency of the exact amount to be deposited with the State. The State will pay all costs incurred under the contract upon presentation of progress billings from the contractor. Following such payments, the State will submit a billing to the Federal Government for the federal aid participation share of the cost. When the project is substantially completed and final actual costs of the project can be determined, the State will present the Agency with a final billing showing the amount due the State or the amount due the Agency. This billing will be cleared by either a payment from the Agency to the State or by a refund from the State to the Agency.

Method B – The Agency's share of the total construction cost as shown on the face of this agreement shall be withheld from its monthly fuel tax allotments. The face of this agreement establishes the months in which the withholding shall take place and the exact amount to be withheld each month. The extent of withholding will be confirmed by letter from the State at the time of contract award. Upon receipt of progress billings from the contractor, the State will submit such billings to the Federal Government for payment of its participating portion of such billings.

Method C – The Agency may submit vouchers to the State in the format prescribed by the State, in duplicate, not more than once per month for those costs eligible for Federal participation to the extent that such costs are directly attributable and properly allocable to this project. Expenditures by the Local Agency for maintenance, general administration, supervision, and other overhead shall not be eligible for Federal participation unless claimed under a previously approved indirect cost plan.

The State shall reimburse the Agency for the Federal share of eligible project costs up to the amount shown on the face of this agreement. At the time of audit, the Agency will provide documentation of all costs incurred on the project.

The State shall bill the Agency for all costs incurred by the State relative to the project. The State shall also bill the Agency for the federal funds paid by the State to the Agency for project costs which are subsequently determined to be ineligible for federal participation (see Section IX).

VII. Audit of Federal Consultant Contracts

The Agency, if services of a consultant are required, shall be responsible for audit of the consultant's records to determine eligible federal aid costs on the project. The report of said audit shall be in the Agency's files and made available to the State and the Federal Government.

An audit shall be conducted by the WSDOT Internal Audit Office in accordance with generally accepted governmental auditing standards as issued by the United States General Accounting Office by the Comptroller General of the United States; WSDOT Manual M 27-50, Consultant Authorization, Selection, and Agreement Administration; memoranda of understanding between WSDOT and FHWA; and Office of Management and Budget Circular A-133.

If upon audit it is found that overpayment or participation of federal money in ineligible items of cost has occurred, the Agency shall reimburse the State for the amount of such overpayment or excess participation (see Section IX).

VIII. Single Audit Act

The Agency, as a subrecipient of federal funds, shall adhere to the federal Office of Management and Budget (OMB) Circular A-133 as well as all applicable federal and state statutes and regulations. A subrecipient who expends \$300,000 or more in federal awards from all sources during a given fiscal year shall have a single or program-specific audit performed for that year in accordance with the provisions of OMB Circular A-133. Upon conclusion of the A-133 audit, the Agency shall be responsible for ensuring that a copy of the report is transmitted promptly to the State.

IX. Payment of Billing

The Agency agrees that if payment or arrangement for payment of any of the State's billing relative to the project (e.g., State force work, project cancellation, overpayment, cost ineligible for federal participation, etc.) is not made to the State within 45 days after the Agency has been billed, the State shall effect reimbursement of the total sum due from the regular monthly fuel tax allotments to the Agency from the Motor Vehicle Fund. No additional Federal project funding will be approved until full payment is received unless otherwise directed the Assistant Secretary for Highways and Local Programs.

X. Traffic Control, Signing, Marking, and Roadway Maintenance

The Agency will not permit any changes to be made in the provisions for parking regulations and traffic control on this project without prior approval of the State and Federal Highway Administration. The Agency will not install or permit to be installed any signs, signals, or markings not in conformance with the standards approved by the Federal Highway Administration and MUTCD. The Agency will, at its own expense, maintain the improvement covered by this agreement.

XI. Indemnity

The Agency shall hold the Federal Government and the State harmless from and shall process and defend at its own expense all claims, demands, or suits, whether at law or equity brought against the Agency, State, or Federal Government, arising from the Agency's execution, performance, or failure to perform any of the provisions of this agreement, or of any other agreement or contract connected with this agreement, or arising by reason of the participation of the State or Federal Government in the project, PROVIDED, nothing herein shall require the Agency to reimburse the State or the Federal Government for damages arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of the Federal Government or the State.

No liability shall attach to the State or Federal Government except as expressly provided herein.

XII. Nondiscrimination Provision

The Agency shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any USDOT-assisted contract and/or agreement or in the administration of its DBE program or the requirements of 49 CFR Part 26. The Agency shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of USDOT-assisted contracts and agreements. The WSDOT's DBE program, as required by 49 CFR Part 26 and as approved by USDOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Agency of its failure to carry out its approved program, the Department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

The Agency hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the rules and regulations of the Secretary of Labor in 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan, insurance, or guarantee or understanding pursuant to any federal program involving such grant, contract, loan, insurance, or guarantee, the required contract provisions for Federal-Aid Contracts (FHWA 1273), located in Chapter 44 of the Local Agency Guidelines.

The Agency further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the applicant so participating is a State or Local Government, the above equal opportunity clause is not applicable to any agency, instrumentality, or subdivision of such government which does not participate in work on or under the contract.

The Agency also agrees:

- (1) To assist and cooperate actively with the State in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and rules, regulations, and relevant orders of the Secretary of Labor.
- (2) To furnish the State such information as it may require for the supervision of such compliance and that it will otherwise assist the State in the discharge of its primary responsibility for securing compliance.
- (3) To refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, government contracts and federally assisted construction contracts pursuant to the Executive Order.
- (4) To carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the State, Federal Highway Administration, or the Secretary of Labor pursuant to Part II, subpart D of the Executive Order.

In addition, the Agency agrees that if it fails or refuses to comply with these undertakings, the State may take any or all of the following actions:

- (a) Cancel, terminate, or suspend this agreement in whole or in part;
- (b) Refrain from extending any further assistance to the Agency under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received from the Agency; and
- (c) Refer the case to the Department of Justice for appropriate legal proceedings.

XIII. Liquidated Damages

The Agency hereby agrees that the liquidated damages provisions of 23 CFR Part 630, Subpart 305, as supplemented, relative to the amount of Federal participation in the project cost, shall be applicable in the event the contractor fails to complete the contract within the contract time. Failure to include liquidated damages provision will not relieve the Agency from reduction of federal participation in accordance with this paragraph.

XIV. Termination for Public Convenience

The Secretary of the Washington State Department of Transportation may terminate the contract in whole, or from time to time in part, whenever:

- (1) The requisite federal funding becomes unavailable through failure of appropriation or otherwise.
- (2) The contractor is prevented from proceeding with the work as a direct result of an Executive Order of the President with respect to the prosecution of war or in the interest of national defense, or an Executive Order of the President or Governor of the State with respect to the preservation of energy resources.
- (3) The contractor is prevented from proceeding with the work by reason of a preliminary, special, or permanent restraining order of a court of competent jurisdiction where the issuance of such order is primarily caused by the acts or omissions of persons or agencies other than the contractor.
- (4) The Secretary determines that such termination is in the best interests of the State.

XV. Venue for Claims and/or Causes of Action

For the convenience of the parties to this contract, it is agreed that any claims and/or causes of action which the Local Agency has against the State of Washington, growing out of this contract or the project with which it is concerned, shall be brought only in the Superior Court for Thurston County.

XVI. Certification Regarding the Restrictions of the Use of Federal Funds for Lobbying

The approving authority certifies, to the best of his or her knowledge and belief, that:

- (1) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
 - (2) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit the Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
 - (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, and contracts and subcontracts under grants, subgrants, loans, and cooperative agreements) which exceed \$100,000, and that all such subrecipients shall certify and disclose accordingly.
- This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification as a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Additional Provisions



Washington State
Department of Transportation

Local Agency Agreement Supplement

Agency _____		Supplement Number _____
Federal Aid Project Number _____	Agreement Number _____	CFDA No. 20.205 (Catalog of Federal Domestic Assistance)

The Local Agency desires to supplement the agreement entered into and executed on _____.

All provisions in the basic agreement remain in effect except as expressly modified by this supplement.

The changes to the agreement are described as follows:

Project Description

Name _____ Length _____

Termini _____

Description of Work ☐ No Change

Reason for Supplement

Type of Work		Estimate of Funding				
		(1) Previous Agreement/Suppl.	(2) Supplement	(3) Estimated Total Project Funds	(4) Estimated Agency Funds	(5) Estimated Federal Funds
PE _____% Federal Aid Participation Ratio for PE	a. Agency					
	b. Other					
	c. Other					
	d. State					
	e. Total PE Cost Estimate (a+b+c+d)					
Right of Way _____% Federal Aid Participation Ratio for RW	f. Agency					
	g. Other					
	h. Other					
	i. State					
	j. Total R/W Cost Estimate (f+g+h+i)					
Construction _____% Federal Aid Participation Ratio for CN	k. Contract					
	l. Other					
	m. Other					
	n. Other					
	o. Agency					
	p. State					
	q. Total CN Cost Estimate (k+l+m+n+o+p)					
	r. Total Project Cost Estimate (e+j+q)					

The Local Agency further stipulates that pursuant to said Title 23, regulations and policies and procedures, and as a condition to payment of the Federal funds obligated, it accepts and will comply with the applicable provisions.

Agency Official

Washington State Department of Transportation

By _____

By _____

Title _____

Assistant Secretary for Highways and Local Programs

Date Executed _____

- .01 Agency.** Enter the agency name as entered on the original agreement.
- .02 Supplemental Number.** Enter the number of the supplement. Supplement numbers will be assigned in sequence beginning with Number 1 for the first supplement.
- .03 Project Number.** Enter the federal aid project number assigned by WSDOT on the original agreement.
- .04 Agreement Number.** Enter the agreement number assigned by WSDOT on the original agreement.
- .05 Execution Date.** Enter date the original agreement was executed on.
- .06 Project Description.** Enter the project name, length, and termini.
- .07 Description of Work.** Clearly describe if there is a change in work. If the work has not changed, put a check mark in the “No Change” box.
- .08 Reason for Supplement.** Enter the reason for this supplement, i.e., increase PE funding to cover design changes presented in the revised prospectus; request funding of construction phase; decrease construction funding to the contract bid amount, etc.
- .09 Type of Work and Funding.** Complete this section in the manner described in Appendix 22.42, Paragraph .05.
- a. Column 1 Enter the amounts from column 1 of the original local agency agreement. If the agreement has already been supplemented, enter the amounts from column 3 of the last supplemental agreement.
 - b. Column 2 Enter additional amounts requested.
 - c. Column 3 Add the amounts in columns 1 and 2.
 - d. Columns 4 and 5 Enter the appropriate amounts based on the participation ratio recorded on the original agreement.
- .10 Signatures.** An authorized official of the local agency signs the Supplemental Agreement, and writes in their title. Submit one originally signed supplement form to the Regional Highways and Local Programs Engineer. It is the responsibility of the local agency to submit an additional, originally signed agreement form if they need an executed agreement for their file.

If the reevaluation identifies changes in the proposed project, the affected environment, the anticipated impacts, or the proposed mitigation measures, which result in significant impact that were not evaluated in the original EIS, a new or supplemental document is prepared and circulated. Other types of changes including those which substantially reduce the project's impacts, do not require the preparation of a supplement. For additional guidance on project reevaluations, refer to 23 CFR 771 and WSDOT's *Environmental Procedures Manual*.

24.7 Biological Assessments

The Endangered Species Act (ESA) does not allow for **grandfathering**. Any federal action is subject to Section 7 of the ESA, whether or not it is already approved and/or underway. On all federal aid projects under construction the local agency, must evaluate the BA's done for the project, update them if needed, and submit them to Region Local Programs office to forward to FHWA, with a copy to NMFS and/or USFWS.

FHWA must fulfill its responsibilities under the ESA, including coordination with NMFS prior to approval of NEPA. In turn NEPA approval (Documented Categorical Exclusion (CE), Finding of No Significant Impact (FONSI), or Record of Decision (ROD)) is required, by FHWA regulation, prior to FHWA approval of funding for right-of-way purchase or construction. In order to sign a final Environmental Impact Statement (EIS) or final Environmental Assessment (EA), the FHWA Transportation and Environmental Engineer will need to verify that the document includes the results of the BA required under the ESA. In order to complete the NEPA process by signing a ROD, FONSI, or Documented CE the FHWA Transportation and Environmental Engineer will need to verify that the requirements above have been met, including completion of coordination with NMFS.

For the interim and on a project by project basis, local agencies can request an exception to some of the requirements listed above. FHWA will consider requests to sign NEPA documents, prior to the completion of the biological assessment consultation process, to allow for right-of-way acquisition. FHWA will not authorize construction funding for these projects, however, until the Section 7 consultation requirements have been met. In order to utilize the exception, the project must be able to meet the following requirements:

- The NEPA document (final EIS, FONSI, CE) must:
 - Demonstrate a reasonable project effort to achieve full compliance with the ESA prior to final EIS, FONSI, or CE approval. At a minimum, this would include informal consultation and the submittal of a Biological Evaluation or Assessment to NMFS or USFWS with detail appropriate to address the ESA issues.
 - Identify and describe the meetings held in an attempt to resolve the issues.
 - Outline the concerns/position of NMFS or USFWS and the areas of agreement and disagreement with

supportive documentation, such as agency letters and meeting minutes.

- The NEPA document (final EIS, FONSI, CE) must:
 - Describe the project features and mitigation measures which have been incorporated into the project to avoid, minimize, and/or compensate for project biological impacts.
 - Describe that NMFS or USFWS suggested features and measures, and hopefully, show that the differences between what has been incorporated into the project and what is being requested are not dissimilar.
 - Outline the reasons why full compliance cannot be achieved prior to final EIS, FONSI, or CE approval.
 - Outline a process of further agency coordination that will reasonably result in ESA compliance.

FHWA will only approve final EIS, ROD, FONSI, or CEs where the above requirements have been met and the consequences of delay outweigh the risks. The risks to FHWA will be defined as:

- Any substantial changes to the project as a result of changes in mitigation requirements, may require a supplemental NEPA document to address the changes.
- Right-of-way may be purchased but cannot be used.
- Even if changes required to meet Section 7 do not trigger supplemental documents or change RW needs, they could increase the cost of the project substantially.

FHWA will consider requests to sign NEPA documents for those projects that meet the conditions above. In order to utilize this exception, the local agency must submit to the Region Local Programs office all documentation detailing compliance with the above listed requirements and a written request, signed by the agency's Approving Authority, requesting agreement from FHWA to utilize this exception for the agency's project. After WSDOT Headquarters Highways and Local Programs determines that the project meets all requirements, they will send it to FHWA for concurrence of the request to allow for right-of-way acquisition prior to completion of Section 7 consultation. Upon FHWA concurrence with the local agency's request, FHWA will advise Highways and Local Programs, who will initiate authorization of federal funding for right-of-way acquisition.

Due to the requirements of agencies to meet their responsibilities under the ESA, the following are the interim procedures. These procedures are continually being reviewed and revised which will result in updates by WSDOT Headquarters Highways and Local Programs. Appendix 24.108 provides some definitions of the environmental references.

.71 Species Listings. The agency must request ESA species listings to assist in assessing a project's environmental impacts from the National Marine Fisheries Service (NMFS), the United States Fish and Wildlife Service (USFWS), the Washington State Department of Natural Resources (DNR), and the Washington State Department of Fish and Wildlife (WSDFW). (Appendix 24.103) These requests are for the agency's entire jurisdiction and will be applied to all of the agency's federal aid projects. These requests must be updated every six months. (Appendix 24.104) Federal and state resource agencies generally have 30 days to respond to a species listing request. The species listings for the NMFS must be obtained from the Region Local Programs office.

For species which are proposed for listing, but not yet listed, any federal action must be evaluated to determine whether it jeopardizes the continued existence of the species. For projects which will not be completed before the proposed listing could take affect, the species should be treated as if it were listed with a conditional effect determination.

Until the project is completed, the agency must request updated species listings from NMFS (through the Region Programs office), USFWS, DNR, and WSDFW, every six months. If any species listings or locations have changed, the BA shall be updated appropriately. Verification of the requests will be included as part of the agency's project management review.

.72 Project Evaluation. Section 7 of the ESA requires that any federal aid project must be evaluated to determine its effects on listed or proposed species and/or critical habitat. The species information and completion of the ECS Part 5 will assist the agency in completing a project evaluation. The evaluation is a guide to assess the project's impact to any listed species or critical habitat.

If the evaluation determines the need to consult with a biologist, the biologist will:

- Conduct a field review.
- Assess the impacts on all listed species and habitat.
- Make an "effect" determination for each listed species.
- Write the biological assessment.

Depending upon the evaluation and the extent of the project's impacts, the effect determination (Section 24.73) will be one of three conclusions:

- No Effect
- May Affect, Not Likely to Adversely Affect
- May Affect, Likely to Adversely Affect

The agency will report on the impacts of the project through either:

- a. "No Effects" letter BA. Typical items to include in the letter are:

- Species listings;
- A signed ECS;
- Brief discussion of the project, its impacts, and justification for the "no effect" determination.

- b. Complete BA report. Typical items to include in the report are:

- A brief description and location of the project;
- Construction information including when the work will be completed;
- Description of listed species or habitat within the project area;
- Evaluation of the potential "effects" on listed species or critical habitat;
- Assertion of "effect" determinations for each listed species;
- Development and recommendations of conservation and mitigation measures;
- Bibliography.

The decision to do a BA depends on the level of potential impacts to streams or surface waters which are within the geographical range of the listed species or population. A BA report should be done when projects cross streams (bridges, culverts), require any construction activity within the active channel (retaining walls, riprap, channel relocations), cause the discharge of additional stormwater or other drainage directly to streams through surface channels without soil or other filtration, significantly increase the volume of surface runoff to salmon streams, result in the removal or alteration of riparian vegetation areas adjacent to streams with listed populations, or when listed species or critical habitat are present.

.73 Effect Determinations. If a federal aid project is in an area where there are species designated as Threatened or Endangered, the ESA requires that FHWA make a determination of the effect of the project on the listed species or critical habitat. FHWA must make this determination of affect in consultation with NMFS (for marine species) or USFWS (for all terrestrial and freshwater species). Part 5 of the ECS includes a checklist which will assist the agency in the determination of effect.

- a. No effect. This conclusion is appropriate if the project has no impact on any listed species or critical habitat and the ECS Part 5 yields a no effect.

For some projects, the local agency may be able to make a no effect determination without a BA report. In this case, a "No Effects" letter BA (Appendix 24.105) stating the basis for the effect determination will be sufficient. The agency would address the type of work

finding, it may, within the 30 day review period, specify the reasons for disagreeing with the finding and request the ACHP review the finding.

Upon completion of the concurrence process or the lapse of the 30 day review period, the Highways and Local Programs Service Center sends the concurrence letter to FHWA, and the FHWA Transportation and Environmental Engineer can finalize the NEPA documentation and subsequently authorizes funding for the right of way or construction phase of the project.

- c. Adverse effects. This conclusion is appropriate when the project has an effect on the historic properties present. An adverse effect is appropriate when an undertaking may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association.

Adverse effects on historic properties include, but are not limited to:

- physical destruction of or damage to all or part of the property.
- alteration of a property, including restoration, rehabilitation, repair, maintenance, etc., that is not consistent with the Secretary's Standards for the Treatment of Historic Properties (36 CFR Part 68) and applicable guidelines.
- removal of the property from its historic location.
- change of the character of the property's use or of physical features within the property's setting that contribute to its historic significance.
- introduction of visual, atmospheric, or audible elements that diminish the integrity of the property's significant historic features.

If an adverse effect is determined, the local agency must document its findings as outlined in Section 24.82 (b). The local agency, Highways and Local Programs and FHWA, must consult with the SHPO/THPO and other consulting parties, including Indian tribes and Native Hawaiian organizations, to develop and evaluate alternatives or modifications to the undertaking that could avoid, minimize, or mitigate adverse effects on historic properties.

The local agency will transmit their findings to the Regional Local Programs Office. The Regional Local Programs Office will transmit the documentation to the Highways and Local Programs Service Center, which will transmit the documentation to FHWA.

FHWA will notify the ACHP of the adverse affect finding by providing the documentation specified in Section 24.82 (b). The notice shall invite the ACHP to participate when the FHWA desires Council participation; the undertaking has an adverse effect upon a National Historic Landmark; or a programmatic agreement under Section 800.14 (b) of 36 CFR Part 800 will be prepared. The ACHP shall advise FHWA and all other consulting parties whether it will participate within 15 days of receipt of notice.

The local agency will provide the Regional Local Programs office and all consulting parties, the documentation detailing its finding, and will also make this information available for public comment. The Regional Local Programs office will send the documentation to the Highways and Local Programs Service Center. Upon receipt of documentation and review, the Highways and Local Programs Service Center will transmit the documentation to SHPO/THPO for review. The local agency, Highways and Local Programs, and FHWA must consult with the SHPO/THPO and other consulting parties to seek ways to avoid, minimize or mitigate the adverse effects. If the local agency, Highways and Local Programs, FHWA, and the SHPO/THPO agree on how the adverse effects will be resolved, all parties will execute a Memorandum of Agreement (MOA). The FHWA will submit a copy of the executed MOA to the ACHP, prior to approving the project, in order to fulfill the requirements of Section 106.

Upon execution of the MOA, the consultation process is completed and FHWA can approve the environmental documentation and authorize participation of federal funds.

If agreement between the local agency, Highways and Local Programs, FHWA, and SHPO/THPO, as well as other consulting parties, cannot be reached, FHWA cannot approve the environmental documentation and will not approve participation with federal aid funds. Federal aid funds cannot be used to build the project.

24.9 Project Reviews

.91 References.

- a. NEPA Section 1505.2 and 1505.3.
- b. 23 CFR 771.109(b).

.92 Definition. Project reviews are procedures for monitoring project development to ensure that environmental commitments are kept and adverse impacts mitigated. Reviews are conducted periodically by responsible local agency or monitoring agency officials throughout the various stages of project development and subsequent maintenance.

.93 Procedures.

- a. The local agency ensures that decisions recorded in environmental documents are accomplished in design and construction of projects and maintained or improved upon during the life of the project.
- b. The local agency continues to maintain the project environmental commitment file which follows the project through design, right-of-way acquisition, PS&E, construction, and maintenance.
- c. During construction, the local agency implements and monitors the adopted impact mitigation measures to ensure that they are satisfactorily maintained or improved upon.
- d. When unique or unusual mitigation is required, the local agency conducts periodic reviews during construction or maintenance to evaluate the effectiveness of mitigation measures that were incorporated into the construction contract.
- e. The local agency must request concurrence from the Regional Highways and Local Programs Engineer for any significant alterations to mitigation measures agreed to during the environmental process, even when changes are made during construction or maintenance.
- f. The local agency makes available progress reports and any results of the impact mitigation measures at the request of the public or agencies.

.94 Commitment File. As an initial part of project development, the local agency establishes a project commitment file. Establishment of this file generally coincides with preparation of the environmental document or could be at later stages as required. The file consists of proposed mitigating measures, commitments made to resource or other agencies with permitting authority, and other commitments made on the project. The file normally consists of design and environmental commitments. Other commitments may be added at the local agency's discretion, such as right-of-way, access, maintenance, permits, and agreements.

The local agency continues to maintain the commitment file as a project progresses through its development process. Whenever commitments are made, they are incorporated into project documents and transferred from one phase of the project to the next. Commitments are normally included or identified in the following documents or actions:

- a. Environmental documents.
- b. Design reports.
- c. Right-of-way plans.
- d. Access plans.
- e. Findings and order.
- f. Contract plans.
- g. Preconstruction conference.
- h. Change orders.
- i. End of project report.
- j. Maintenance.

To organize and track commitments made during the development and implementation of a project, a "Record of Commitment," DOT Form 220-021, or similar form may be used.

When a commitment is made, record it on the Record of Commitment form. The form contains the detail necessary to document the commitment, including references to correspondence, agreement numbers, etc.

A commitment may be revised when all parties involved agree to the revision.

Records (forms) on completed commitments should be retained for at least a year after the completion date. Commitments requiring ongoing maintenance need to be retained in the files as long as the commitment is active.

24.10 Appendixes

- 24.101 Instructions for Completing the Environmental Classification Summary
- 24.102 Biological Assessment Coordination Process
- 24.103 ESA Species Listings Requests — Agency Contacts
- 24.104 ESA Species Listings Request Letter Template
- 24.105 "No Effects" BA Letter Template
- 24.106 "May Affects" BA Template
- 24.107 7(d) Request Letter Template
- 24.108 Definitions
- 24.109 27 Tribes and Treaty Ceded Areas of Washington State
- 24.110 Local Agency Environmental Classification Summary

The Environmental Classification Summary (ECS) form consists of six parts, five of which must be completed by the Local Agency. The ECS form is part of a Local Agency's NEPA documentation. As such, the form must contain accurate, current information and enough detail to clearly indicate why a requirement is either not applicable or has been clearly considered and satisfactorily resolved.

Throughout these directions, a number of references and links are provided from the Washington State Department of Transportation's Environmental Procedures Manual (EPM), July 2001 edition. This manual should be used as a resource for additional information on an environmental requirement's background and approval process. The following link is for the EPM:

<http://www.wsdot.wa.gov/eesc/environmental/programs/regcomp/ProceduresManual/start.pdf>

A number of the considerations within these directions require early and potentially lengthy timeframes for coordination and eventual approval. Be sure to initiate the individual environmental processes early, in order to include appropriate supporting documentation and approvals with the submittal of the final ECS form.

Part 1 – Project Description

Complete all boxes, if information is known.

WRIA No. & Name – The names and numbers of these areas, along with a map, are located in WAC 173-500-040.

Project Description – Provide a detailed description of the proposed project and associated work items included within the scope of the project.

Part 2 – Environmental Classification

Indicate both the NEPA and SEPA classification for the project, by checking the appropriate boxes. If the project falls under either the NEPA or SEPA CE classification, indicate the CE Type, using the reference provided.

Indicate the name of the staff person who completed the form in the box under the NEPA Approval Signatures section. Be sure to print the name of this individual.

Once FHWA signature has been secured, a copy of the signed page 1 of the ECS will be returned to the Local Agency, via the Regional Local Programs Office. The FHWA signed ECS signifies NEPA approval for the project.

If the project falls under the 1999 CE MOU, the document will not be sent to FHWA for signature. The CE MOU allows WSDOT to approve the ECS. For CE MOU projects, a copy of the signed page 1 will be returned to the local agency, via the Regional Local Programs Office, after WSDOT signature has been secured and OSC Local Programs' review.

For a copy of the 1999 CE MOU, click on the following link: <http://www.fhwa.dot.gov/wadiv/ProgCEMOU.pdf>

Part 3 – Permits and Approvals Required

Indicate the permits and approvals required for the project, by checking either the "yes" or "no" box for each particular permit.

Refer to the EPM for questions regarding specific permits and subsequent applicability to the project.

Part 4 – Environmental Considerations

Address all fifteen (15) items. In some instances, it may be appropriate to indicate that the consideration is "not applicable". If this is the case, include a sentence or two explaining why the consideration is not applicable.

Air Quality

Federal, state and local regulations require that all projects be reviewed for potential impacts to air quality. All transportation projects requesting federal funding must be analyzed for regional air quality emissions. This regional analysis is usually conducted by the local metropolitan planning organization (MPO) or regional transportation planning organization (RTPO). Additional regional analysis may be necessary depending upon the nature of the project. *(Additional information on Air Quality considerations and applicable regulations can be found in Section 425 of the EPM.)*

On the ECS form, indicate whether the project is included in your area's metropolitan transportation plan. If "yes", indicate the date the plan was approved.

Indicate whether your project is located in an air quality non-attainment or maintenance area. The following link provides a map indicating the locations of all of the non-attainment and maintenance areas within the state of Washington:

http://www.ecy.wa.gov/programs/air/other/namaps/Web_Map_Intro.htm#Particulate%20Matter

Indicate whether the project is exempt from air quality conformity requirements. If “yes”, note the exemption. Refer to 40 CFR 93.126 and WAC 173-420-120, for the list of project types exempt from regional analysis. (*Section 425 of the EPM also provides a list of exempt project types.*)

If applicable, attach air quality study and hot-spot analyses performed for the project.

Critical/Sensitive Areas

- a) Water quality and other surface water issues must be addressed during the development of a project. Given the importance of groundwater resources, like sole source aquifers, wellhead protection areas, and Critical Aquifer Recharge Areas (CARAs), consideration must be given to the potential impacts a project might have on these resources.

Indicate whether the project is located within an aquifer recharge area, wellhead protection area or sole source aquifer area. The enclosed link provides a map, which notes the locations of all of the sole source aquifers located within the state of Washington:

<http://www.epa.gov/r10earth/maps/ssarx.html>

If the project is located within a sole source aquifer area, indicate whether the project is exempt from the Environmental Protection Agency’s (EPA) review and approval. Projects considered exempt from EPA review and approval include: resurfacing; lighting; signing; pavement marking; guardrail; signalization; freeway surveillance and control system; railroad protective devices; glare screening; median barriers; energy attenuators; and the temporary replacement of highway facilities damaged by natural disasters or catastrophic failures. All other types of projects must be submitted to EPA for review and approval. (*Additional information on Sole Source Aquifer considerations can be found in Section 433 of the EPM.*)

If the project is located within a sole source aquifer and is not exempt, attach the concurrence letter received from EPA.

- b) Describe any geologically hazardous areas located within the project area.
- c) Describe general habitat located within the project area and known fish and wildlife species present within and around the project area.
- d) Indicate whether the project is located within any wetlands.

If the project is located within any wetlands, identify the estimated area of impact to wetlands in acre(s). Also describe coordination that has occurred with the Washington State Dept. of Ecology and the U.S. Army Corps of Engineers to mitigate for the impacts. Attach a copy of the mitigation plan.

Cultural Resources/Historic Structures

Both NEPA in general and, more specifically, Section 106 of the National Historic Preservation Act of 1966, require federal agencies to take into account the effects of a project on properties included in or eligible for inclusion in the National Register of Historic Places. This process is designed to identify potential conflicts between preservation concerns and transportation needs and resolve such conflicts through consultation with the Office of Archaeology and Historic Preservation, affected Tribes, and any other interested consulting parties.

Indicate whether the project fits one of the exempt activities listed in Section 24.82(a) of the LAG manual. If “yes”, list the exemption.

If “no”, indicate the dates of OAHP consultation, Tribal consultation (if applicable). Also indicate whether the project will result in an adverse affect to any cultural and/or historic resources. If “yes”, indicate the MOA date of approval. (*Additional information on Cultural/Historic Resources considerations can be found in Section 456 of the EPM.*)

Attach a copy of the cultural resources survey; all correspondence with OAHP and Tribes, including consultation letters; and a copy of the signed MOA, as appropriate.

Flood Plains or Ways

Indicate whether the project is located within a 100-year flood plain. If “yes”, indicate whether the project is located in a 100-year floodway.

Indicate whether the project will impact a 100-year flood plain. If “yes”, describe the impacts and analyses conducted. If the impacts have been identified as significant, indicate coordination undertaken and resolution. (*Additional information on Flood Plains consideration can be found in Section 432 of the EPM.*)

Attach any analyses conducted.

Hazardous and Problem Waste

Stringent federal and state environmental laws and regulations dictate an agency's full responsibility for cleanup and proper disposal of hazardous materials.

Indicate whether the project is likely to involve site clean-up. If "yes", describe proposed plan and coordination undertaken. Attach a copy of proposed plan and approvals.

Indicate whether the project will create any hazardous waste. If "yes", describe proposed plan to handle and dispose of waste. Attach a copy of proposed plan and approvals. (*Additional information on Hazardous Materials considerations can be found in Section 447 of the EPM.*)

Noise

A traffic noise analysis is required by law for federally funded projects and required by state policy for other funded projects that: 1) involve construction of new highway; 2) significantly changes the horizontal or vertical alignment of an existing highway; or 3) increases the number of through traffic lanes on an existing highway.

Identify and describe any potential noise receptors within the project area and subsequent impacts to those noise receptors. If impacts are identified, describe significance and proposed mitigation measures. Attach a copy of noise study, if applicable. (*Additional information on Noise considerations can be found in Section 446 of the EPM.*)

Parks, Recreation Areas, Wildlife Refuges, Historic Properties or Scenic Byways, 4(f)/6(f) Lands

Identify and describe any 4(f) and/or 6(f) lands located within or adjacent to the project area.

Under Section 4(f) of the 1966 Department of Transportation Act, the FHWA and other USDOT agencies cannot approve the use of land from a publicly owned park, recreation area, or wildlife and waterfowl refuge, or any significant historic site, unless a determination is made that:

- 1) There is no feasible and prudent alternative to using the property; and
- 2) The proposed action includes all possible planning to minimize harm to the property resulting from such use.

If a 4(f) property is present, identify the property and describe the impacts to the 4(f) resource. If impacts are identified, the severity of the impacts and type of 4(f) resource will dictate whether a programmatic 4(f) document or an individual 4(f) document must be prepared. Copies of the programmatic 4(f) agreements available – describing conditions to be met and subsequent documentation requirements – can be found within *Section 455 of the EPM* or at the following link:

<http://www.fhwa.dot.gov/environment/guidebook/chapters/v2ch15.htm>

If the project's impacts to 4(f) resources are not programmatic, an individual 4(f) document must be prepared. Guidance on the format and content of the individual 4(f) document can be found in *Section 455 of the EPM* or at the following link:

<http://www.fhwa.dot.gov/environment/guidebook/vol2/doc15d.pdf>

If impacts to 4(f) resources are identified, attach a copy of the approved programmatic or individual 4(f) document.

Section 6(f) applies to all projects that impact recreational lands purchased or improved with land and water conservation funds. The Secretary of the Interior must approve any conversion of property acquired or developed with assistance under this act to other than public, outdoor recreation use. If a 6(f) property is present and impacts will occur, attach a copy of the Secretary of the Interior's approval. (*Additional information on Section 6(f) considerations can be found in Section 455 of the EPM.*)

Resource Lands

Identify any of the following resource lands located within 300 feet of the project limits or those that will be otherwise impacted by the project.

- a) Identify whether any agricultural land is present. If "yes", is the resource considered to be prime and unique farmland? Farmlands that are defined as "prime", "unique" or of state or local significance are protected by federal and state legislation.

Prime farmland is defined as land that has the best combination of physical and chemical characteristics for producing food, feed, fiber, forage, oilseed, and other agricultural crops with minimum inputs of fuel, fertilizer, pesticides and labor, and without intolerable soil erosion. Prime farmland includes land that possesses the above characteristics and may include land currently used as cropland, pastureland, rangeland, or forestland. It does not include land already in or committed to urban development or water storage.

Unique farmland is defined as land other than prime farmland that is used for production of specific high-value food and fiber crops. It has the special combination of soil quality, location, growing season, and moisture supply to economically produce sustained high quality or high yields of specific crops when treated and managed according to acceptable farming methods. Example of such crops include lentils, nuts, annual cropped white wheat, cranberries, fruits, and vegetables.

If the project will result in the conversion of prime or unique farmland, the project must be evaluated to determine if it fits under one of the following exemptions:

- Construction within existing rights of way purchased before August 6, 1984.
- All resurfacing and normal road repairs.
- Rights of way taken from existing residents and/or businesses.
- Borrow areas and disposal sites not arranged for under the direction of WSDOT.
- Land committed to water storage.

If the project will result in the conversion of prime or unique farmland and is not exempt, the Local Agency must complete Parts I and III of Form AD 1006 and submit a copy of for review to the Natural Resources Conservation Service (NRCS) Office. (*Additional information on Farmlands considerations can be found in Section 454 of the EPM.*) A copy of Form AD 1006 is enclosed below:

ftp://npssftp.ftw.nrcs.usda.gov/ftp/forms_r2/AD/AD1006.pdf

And a list of the NRCS Offices is available via the following link:

http://oip.usda.gov/scripts/ndisapi.dll/oip_agency/index?state=wa&agency=nrcs

Attach a copy of the NRCS approved Form AD 1006, if applicable.

- b) Identify any forest/timber lands present within the project area and impacts.
- c) Identify any mineral deposits present within the project area and impacts.

Rivers, Streams (Continuous, Intermittent), or Tidal Waters

- a) Identify all waterbodies within 300 feet of the project limits or any waterbodies that will otherwise be impacted by the project. If waterbodies are present, identify the Fisheries WA Stream Number, if available, and if the waterbody is on Ecology's 303(d) Report. If the waterbody is on Ecology's 303(d) Report, include the reasons for listing and date of report. The enclosed link provides Ecology's 303(d) List of Impaired and Threatened Waterbodies:

<http://www.ecy.wa.gov/programs/wq/303d/index.html>

If a river is present within the project area, determine and note whether the river has been designated as a federal Wild and Scenic River or as part of Washington's Scenic River System. Federal and state legislation protects the wild and scenic values of certain rivers. Transportation projects that may adversely affect a wild and scenic river are encouraged to coordinate early with local, state, and/or federal agencies responsible for a designated wild and scenic river.

Although no specific permits are required for impacting a wild and scenic river, attach documentation that will illustrate the coordination that occurred with responsible officials to identify and study impacts, identify possible mitigation, and select an alternative.

Federally designated Wild and Scenic Rivers within the state of Washington are:

- Skagit River and all tributaries upstream of the pipeline crossing at Sedro Wooley
- Klickitat River from Wheeler Creek to the confluence with the Columbia River
- White Salmon River from the confluence of Gilmer Creek (near the town of BZ Corner) to the confluence with Buck Creek

Federally designated Study Rivers within the state of Washington are: (Study Rivers are areas being studied to determine if they qualify for designation.)

- Klickitat River upstream of the confluence of the Little Klickitat River to the Yakima Indian Reservation boundary
- White Salmon River upstream of the confluence with Gilmer Creek

Responsible agencies are:

- State Parks and Recreation Commission – manage all state scenic rivers. Local agencies also administer State Scenic Rivers through their Shoreline Management Plans.
- National Park Service, Recreation Programs – manage all rivers on the Nationwide Rivers Inventory.
- Mt. Baker-Snoqualmie National Forest, Mt. Baker Ranger District office – manages the Skagit Wild and Scenic River.
- Columbia River Gorge Commission – manages the Klickitat and White Salmon Wild and Scenic Rivers.

Additional information on wild and scenic rivers within the state of Washington can be found at the following link:

<http://www.nps.gov/rivers/wildriverslist.html#wa>

Section 453 in the EPM provides additional information on designated rivers within the state of Washington and guidance on ensuring appropriate consideration of impacts to wild and scenic rivers.

- b) Identify any stream crossing structures by type.

Tribal Lands

Identify any Tribal lands located within the project area or that will otherwise be impacted by the project. The enclosed link provides a map identifying the location of federally recognized Tribal land within the state of Washington:

<http://www.goia.wa.gov/directory/pdf/TRIBAL%20LOCATIONS.pdf>

If Tribal lands are present or will be otherwise be impacted by the project, describe the coordination efforts that have occurred with the Tribe(s).

Visual Quality

Identify whether the project will impact roadside classification or visual aspects. If “yes”, identify the impacts and their level of significance.

Water Quality/Stormwater

Respond to the questions listed and include as description on the proposed water quality/quantity treatment for new and any existing impervious surface in the space provided.

Ensure project is in adherence to local requirements; state Dept. of Ecology requirements; and adheres to the requirements of the Federal Endangered Species Act. Compliance with one agency doesn’t necessarily guarantee adherence to another agency’s requirements (e.g., DOE’s manual provides opportunities for treatment exemptions that ESA does not recognize).

Previous Environmental Commitments

Identify whether any previous environmental commitments have been made within the project area. If “yes”, describe the commitments, whether they were the result of a permit, identify the agency issuing the permit, date issued, and how the commitments will be met, within the space provided.

Long Term Maintenance Commitments

Identify whether any long-term maintenance commitments are necessary for the project. If “yes”, describe the commitments and how they will be met, within the space provided.

Environmental Justice

Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (2/11/94), requires all federal agencies, to the extent allowed by law, to administer and implement its programs, policies and activities that affect human health or the environment so as to identify and avoid “disproportionately high and adverse” effects on minority and low-income populations.

The Executive Order is available online at:

<http://www.fhwa.dot.gov/environment/ejustice/facts/index.htm#legislation>

Projects must be evaluated for disproportionate impacts to minority and low-income populations. If the potential for impacts to minority and low-income populations is present, attach documentation that will illustrate the impacts were identified and evaluated to determine if they are disproportionate; coordination that occurred; the opportunities provided for community input; and mitigation measures.

Part 5 Biological Assessment and EFH Evaluations

Section 7 of the Endangered Species Act requires each federal agency to ensure its actions to authorize, permit or fund a project do not jeopardize the continued existence of any threatened or endangered species. This section of the Act requires agencies to evaluate the potential impacts their project may have on listed and proposed species, make an effect determination and consult with the National Marine Fisheries Service (NMFS) and U.S. Fish and Wildlife Service (USFWS), as appropriate.

Answer all questions within the Part 5 checklist. Use the space provided to further explain/justify any “yes” noted on the checklist. If the number of “yes” responses are too numerous or cannot be explained easily, then a separate biological assessment must be prepared. This does not mean that a NE determination is not the appropriate conclusion; just that it cannot be justified within the checklist.

Check the appropriate ESA effect determination. If a NLTAA or LTAA determination is checked, include the date of concurrence or issuance of BO, as appropriate.

Under the Fishery Conservation and Management Act of 1976 (Magnuson-Stevens Act), NMFS was given legislative authority to regulate the fisheries of the United States. In 1996, this Act was amended to emphasize the sustainability of the nation’s fisheries and create a new habitat conservation approach. This habitat is called Essential Fish Habitat (EFH).

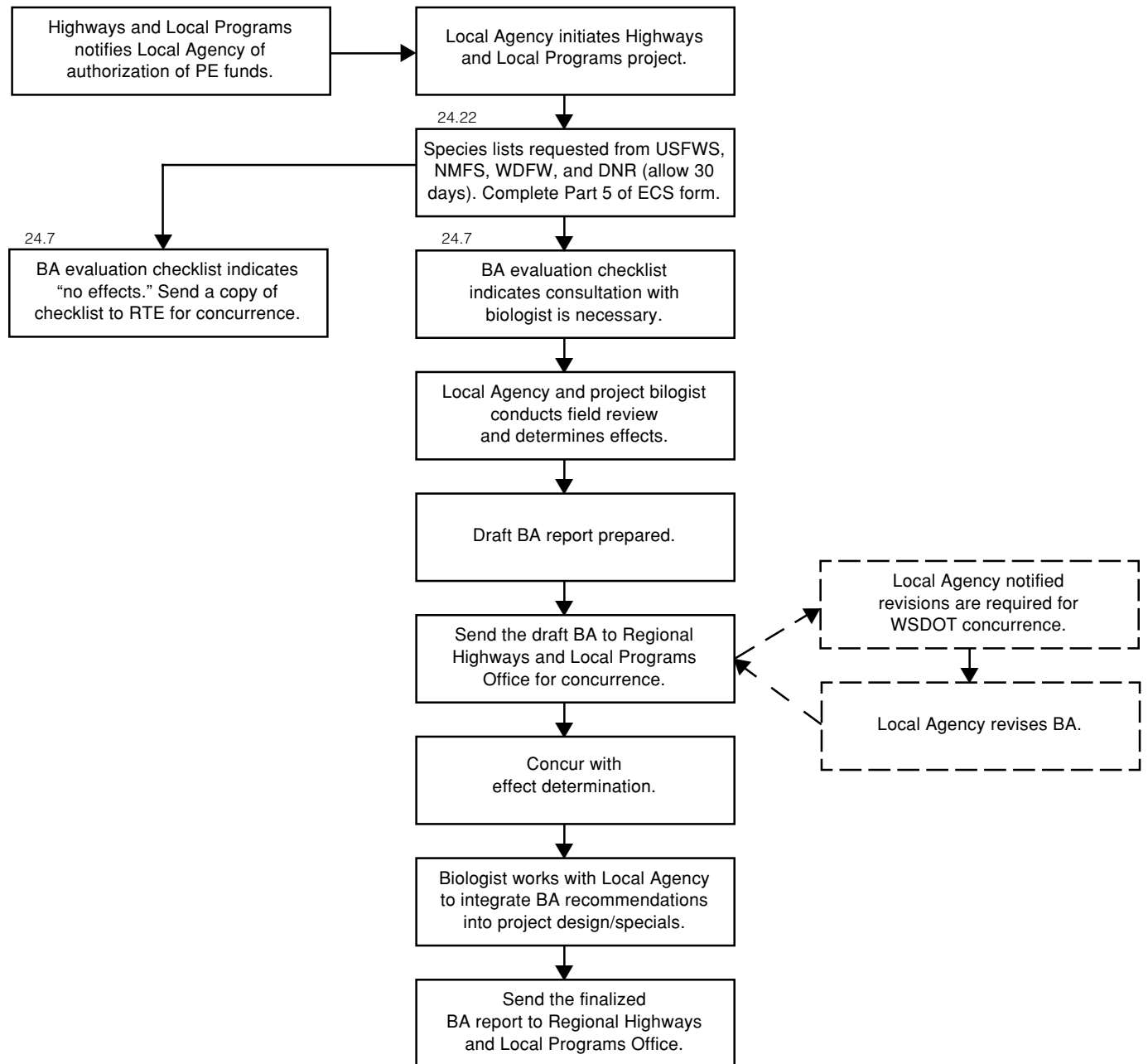
Federal agencies must consult with NMFS on all activities or proposed activities, authorized, funded, or undertaken by the agency that may adversely affect EFH. Additional information on EFH can be found at NMFS homepage:
<http://www.nmfs.noaa.gov/>

Check the appropriate effect determination for Essential Fish Habitat considerations. If an adverse affect determination is made, provide the date of concurrence from NMFS and identify any conservation measures provided by NMFS.

If the Part 5 checklist is not used as the BA documentation, attach copies of the BA and EFH analysis; all correspondence with the NMFS and USFWS; and copies of concurrence letters and BOs, as appropriate.

Part 6 FHWA Comments

Leave this section blank. FHWA will use this section to provide any comments or notes regarding the NEPA approval.



A letter is sent to each of the following agencies requesting information on threatened, endangered, proposed, candidate, and species of concern.

U.S. Fish and Wildlife Service (USFWS)

Agency provides legal listings for terrestrial and freshwater species:

Western Washington:

Supervisor
U.S. Fish and Wildlife Service
510 Desmond Drive SE, Suite 102
Lacey, WA 98503-1273
(360) 753-9440

Eastern Washington:

Supervisor
U.S. Fish and Wildlife Service
Spokane Field Office
11103 E. Montgomery Drive, Suite 2
Spokane, WA 99206
(509) 921-0160

National Marine Fisheries Service (NMFS)

Regional Highways and Local Programs Office provides legal listings for marine species.

Washington State Department of Fish and Wildlife (WDFW)

Agency provides site specific information on species monitored by the state that are documented in the Habitats and Species maps. This is sensitive, confidential information and you will need to sign an agreement to obtain it. Only include the letter from WDFW in the BA. Maps **cannot** be published in any public document. (This is the best information source on the presence of species near your project.) A fee may be associated with this request.

Supervisor
Priority Habitats and Species
Washington State Department
of Fish and Wildlife
600 Capitol Way North
Olympia, WA 98501-1091
(360) 902-2543

Washington State Department of Natural Resources (DNR)

Agency provides information on locations of sensitive plants and rare plant communities that are documented in the Natural Heritage Program (NHP) database.

Supervisor
Washington Natural Heritage Program
Division of Forest Resources
Department of Natural Resources
P.O. Box 47016
Olympia, WA 98504-7016
(360) 902-1667

Appendix 24.104 *ESA Species Listings Request Letter Template*

The letter will request all ESA species and habitat listings within your agency's jurisdiction. This information can be used for all projects within the agency's jurisdiction. Updates to these listings, however, must be obtained every six months. This can be done by requesting a complete new listings or submitting a copy of the previous listings and requesting updates. A copy of this letter is submitted to each agency contact in **Appendix 24.103**.

February 3, 1999

ATTN: Resource Agency Contact

RE: Species Listings Within *Local Agency's*
Jurisdiction

Dear Resource Agency Contact:

The *Agency name* is requesting all Endangered Species Act species and habitat listings within our agency's jurisdiction. Our agency understands this information must be updated every six months and the information can be used to evaluate all projects conducted within our jurisdiction. Our agency further understands the species and habitat listings may be updated prior to our six month update request, and it will be our responsibility to ensure that we obtain any updated information.

A map detailing the boundaries of our jurisdiction has been included for your use. If you have any questions, please either e-mail me at agency contact's e-mail address or call me at agency contact's phone number.

Sincerely,

Agency Contact

Enclosures

KEY:

Regular type — recommended wording

Italicized type — fill in with appropriate information

Bold type — key wording that should remain in letter

Agency Address

ATTN:

RE: *Project Name*
Federal Aid Project Number

Dear *Name of Agency Contact*:

Local Agency name is proposing to *project description*. We are preparing this assessment in response to a listing we received on *date* (FWS Reference #, *if listing is from USFWS, no number if from NMFS*). The listing indicated the potential presence of *listed species*.

The project is located *provide location including street, county, (TRS)*. Proposed work includes *project description*. Construction is planned for *months and year* and will take approximately *amount of time in days* to complete. *Describe any expected noise and disturbance issues generated from the project*.

A field review of the project site was conducted on *date* by *agency biologist*. Land use in the vicinity of the project area consists of *describe land use in terms of available habitat, existing noise disturbances, etc.*

Describe habitat present as it relates to each threatened and endangered species. Address presence of threatened and endangered species in habitat.

Review of the Washington State Department of Fish and Wildlife Habitats and Species maps *include all data bases reviewed or other sources such as local fisheries biologists indicated that provide information found, etc.*

Discuss impacts from construction for each listed species or guild of species (e.g., fish). Write one paragraph per species, include the no effect determinations.

We have determined that *select appropriate justifications, they may include: due to the location, the type of work proposed, time of year work is proposed for, lack of use of the project area, low level of use, the large amount of available habitat in the immediate vicinity of the project, etc.*

Make "no effect" determinations for each listed and proposed species, and impact determinations for candidate species and species of concerns. It is our understanding that this satisfies our responsibilities under Section 7 (c) of the Endangered Species Act at this time, and we are sending you this copy of our assessment for your files. We will continue to remain aware of any change in status of these species and will be prepared to re-evaluate potential project impacts if necessary. To ensure concurrence with these findings, we request that you transmit a letter signifying your agreement with these conclusions. Please call *biologist* if you require any additional information or have any questions about this project.

Sincerely,

Attachments: Vicinity maps and photos

The following pages provide an example of what a detailed biological assessment document for a “may affect” determination may include. Each BA will be dictated by the project and site’s unique and specific characteristics.

KEY:

Regular type — suggested wording

Italicized type — fill in with project specific information

PROJECT NAME
Biological Assessment for *Listed Species*
Federal Aid Project Number

SUMMARY

Provide a one paragraph summary of the project (TSR location), its impacts and the effect determination for each listed species.

INTRODUCTION

An endangered species listing for this project was received from the U.S. Fish and Wildlife Service on *date* (FWS ref. #). The letter indicated that the following species may be present in the vicinity of the project area.

Name	Scientific Name	Federal Status	State Status
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List species here from listing, include species of concern.

An endangered species listing was also received from the National Oceanic and Atmospheric Administration, the National Marine Fisheries Service on *date*. The letter indicated that the following species, *list species*, may occur in the area.

Name	Scientific Name	Federal Status	State Status
------	-----------------	----------------	--------------

List species here from listing, include species of concern

A field review of the project site was conducted on *date or dates* by an *agency* biologist. The purpose of the site visit was to determine the status of listed and candidate species in the area and to evaluate the potential impacts of the project. Pertinent literature was reviewed, including information received from the Washington State Department of Fish and Wildlife’s Habitats and Species maps and other information sources. *Provide a statement of what the databases indicated and discuss what other information sources, such as local biologists, were contacted.*

SETTING

The project is located in *county*, *TRS information*, including *vicinity map*. Describe the project setting including *local physiographic region, economic or resource conditions, general vegetation, levels of disturbance (e.g., nearby traffic, nearby marina, etc.)*, etc.

PROJECT DESCRIPTION

Describe the project including discussions on clearing (give specific amount of area), grading, habitat alterations (what, how many feet off of the existing pavement will the project extend to?), tree removal (how many trees, what kinds, diameters, etc.), stream work, blasting, pile driving, sediment causing activities, type of equipment to be used, length of time construction will take, anticipated start and end dates, in water work windows, etc. The time of construction is very important to include. It is impossible to evaluate the impacts of the project on listed species without knowing when the disturbances will occur.

WATER RESOURCES

Describe the significant streams, lakes, rivers, and wetlands in the vicinity of the project and describe the fish habitat features, such as woody debris, riparian quality in the project area. If a body of water is present, describe the watershed, any limiting factors, average temperatures, stream bed composition, existence of pools/riffles/glides, amount of large woody debris, etc.

VEGETATION

Describe the general vegetation in the project area and impacted vegetation. Vegetation descriptions should be general in terms of habitat types rather than lengthy species lists unless listed plants are present. Address potential perch, roost, or nest trees, identify habitat for listed species in the vicinity of the project. Describe existing communities (e.g., undisturbed deciduous forest, disturbed coniferous forest); list dominant vegetation in communities, understory and shrub layers, herbaceous vegetation; list types and average dbh of trees in communities; is any vegetation suitable for nesting or foraging; etc.

SPECIES OF CONCERN

Include one major section for each listed species. Address: general species requirements such as food sources, habitat use, key aspects of habitat (nest, perch, roost trees, migration corridors, rearing areas, etc.), timing when species are most susceptible to disturbances, etc. Focus on the species' use of the project area and vicinity. Provide specific information on habitat in the project area, both the amount and quality, occurrence of species in the area, and the level of use in the area. Include direct observations with dates, WDFW or other records of sightings or use of the area by species in question, any surveys available, and observations made by other biologists such as WDFW biologists.

For fish, address: habitat in terms of whether it is migrating, spawning, rearing, or cover wintering habitat. Discuss run timing, in and out migration of adults and juveniles. (It may help to include a calendar showing the life history of a species by month.) Address riparian vegetation, pool and riffle habitat, water levels, and large woody debris. Temperature and water quality can be discussed in general terms if information is available. This information will be summarized in the impacts table included in the impacts section.

Address each listed species that is incidental to the project (has no point location) such as marbled murrelet flyovers, when no suitable habitat is present in the project vicinity or migrating peregrine falcons or salmon. For each species provide a short summary of their natural history, the availability of habitat in the project area, their expected use of the project area.

DESIGNATED CRITICAL HABITAT

For each designated critical habitat, describe the quality, location, amount, and importance (obtain this from the final ruling) of the critical habitat and the use of the habitat within the project area.

PROPOSED SPECIES OR CRITICAL HABITAT

Treat each proposed species as though it is a listed species. Provide their natural history, the availability of habitat in the project area, and their expected or actual use of the project area.

CANDIDATE SPECIES

For each candidate species, provide a short summary of their natural history, the availability of habitat in the project area, their expected or actual use of the project area.

SPECIES OF CONCERN

For each species of concern, provide a short summary of their natural history, the availability of habitat in the project area, and their expected or actual use of the project area. These species can be lumped by guild; e.g., address all bat species in one paragraph and all lampreys in one paragraph, etc.

POTENTIAL IMPACTS TO LISTED AND PROPOSED SPECIES

Address all impacts from the project, this discussion should consider the project both during construction and after it is in place. For most species, the impacts to be addressed include direct disturbance during construction, impacts to its habitat, and impacts to food resources.

- For disturbances, address all potential noise and activity type impacts; discuss if the project meets the species recovery plan guidance for noise disturbance.
- For impacts to habitat, determine the amount of habitat that will be impacted; determine if the project meets the species recovery plan.
- For impacts to food sources, address the potential impacts and how impacts can be minimized. Examples are impacts to water quality or loss of grazing habitat.
- Address interrelated, interdependent, and cumulative effects.
- Make an effect determination for each threatened, endangered, and proposed species.

POTENTIAL IMPACTS TO CANDIDATE SPECIES AND SPECIES OF CONCERN

Address any potential impacts to these species. Species can be lumped and addressed together if there are similar impacts; e.g., all fish and amphibian species, all bat species, etc. Make an impact assessment, do not make an effect determination for these species.

RECOMMENDATIONS

Provide recommendations to help the project minimize impacts to listed species. These may include the potential of habitat enhancement, use of best management practices, timing restrictions, etc. These recommendations must be included in the project. Normally, NMFS and USFWS require the inclusion of the recommendations in the project as part of the conditions of their concurrence.

Examples:

- Tree removal will occur between October 1 and December 31 to avoid owl and murrelet nesting seasons.
- Construction will occur between August 6 and October 31. Construction may take two years to complete.
- Trail construction shall be completed in the wintertime, when the sensitive species are dormant. Utilize hand tools and labor to construct the trail and avoid removing vegetation wherever possible.

- During vegetation removal, all trees and shrubs shall be felled into the area that will be cleared, and not into the surrounding forested areas or streams to minimize impacts to existing vegetation. All vegetation removed from construction areas must be removed from the site to avoid placing it in sensitive plant areas.
- Limits of clearing shall be flagged or fenced with temporary construction fencing. Trees not to be removed should be flagged or fenced off with temporary fencing.

CONCLUSIONS

Summarize the proposed project, include the listed species near the project and the appropriate conclusion. Make an effect determination for each listed and proposed species, and an impact assessment for the candidate species and species of concern.

REFERENCES

List all cited references.

APPENDICES

Include photos, simple project plans, copies of the listing letters for NMFS, USFWS, WDFW, and DNR.

Date

Region Local Programs Engineer

Agency
Project Name
Federal Aid Project Number

Dear

Attached is the completed BA for the *Local Agency and project name* which has an effect determination of “May Affect, Not Likely to Adversely Affect” for any species or critical habitat within the project’s area. At this time we are requesting Highways and Local Programs and FHWA to review and concur with the BA effect determination so that this project can addendum the 7(d) project list.

With this request, *Local Agency* commits to: meet any and all mitigation requirements determined by NMFS and/or USFWS (to be outlined in their concurrence letters); and maintain continuous coordination with Highways and Local Programs and FHWA until the successful completion of the concurrence process.

Local agency details the time critical aspects of the project to justify the inclusion of the project on the 7(d) list for this construction season.

Sincerely,

Local Agency’s Approving Authority

(Excerpt from 50 CFR 402.02)

Action means all activities or programs of any kind authorized, funded, or carried out, in whole or in part, by Federal agencies in the United States or upon the high seas. Examples include, but are not limited to:

- (a) actions intended to conserve listed species or their habitat;
- (b) the promulgation of regulations;
- (c) the granting of licenses, contracts, leases, easements, rights-of-way, permits, or grants-in-aid; or
- (d) actions directly or indirectly causing modifications to the land, water, or air.

Biological assessment refers to the information prepared by or under the direction of the Federal agency concerning listed and proposed species and designated and proposed critical habitat that may be present in the action area and the evaluation of potential affects of the action on such species and habitat.

Biological opinion is the document that states the opinion of the Service as to whether or not the Federal action is likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of critical habitat.

Effects of the action refers to the direct and indirect affects of an action on the species or critical habitat, together with the effects of other activities that are interrelated or interdependent with that action, that will be added to the environmental baseline. The environmental baseline includes the past and present impacts of all Federal, State, or private actions and other human activities in the action area, the anticipated impacts of all proposed Federal projects in the action area that have already undergone formal or early section 7 consultation, and the impact of State or private actions which are contemporaneous with the consultation in process. Indirect effects are those that are caused by the proposed action and are later in time, but still are reasonably certain to occur. Interrelated actions are those that are part of a larger action and depend on the larger action for their justification. Interdependent actions are those that have no independent utility apart from the action under consideration.

Formal consultation is a process between the Services and the Federal agency that commences with the Federal agency's written request for consultation under section 7(a)(2) of the Act and concludes with the Service's issuance of the biological opinion under section 7(b)(3) of the Act.

Incidental take refers to takings that result from, but are not the purpose of, carrying out an otherwise lawful activity conducted by the Federal agency or applicant.

Informal consultation is an optional process that includes all discussions, correspondence, etc., between the Service and the Federal agency or the designated non-Federal representative prior to formal consultation, if required.

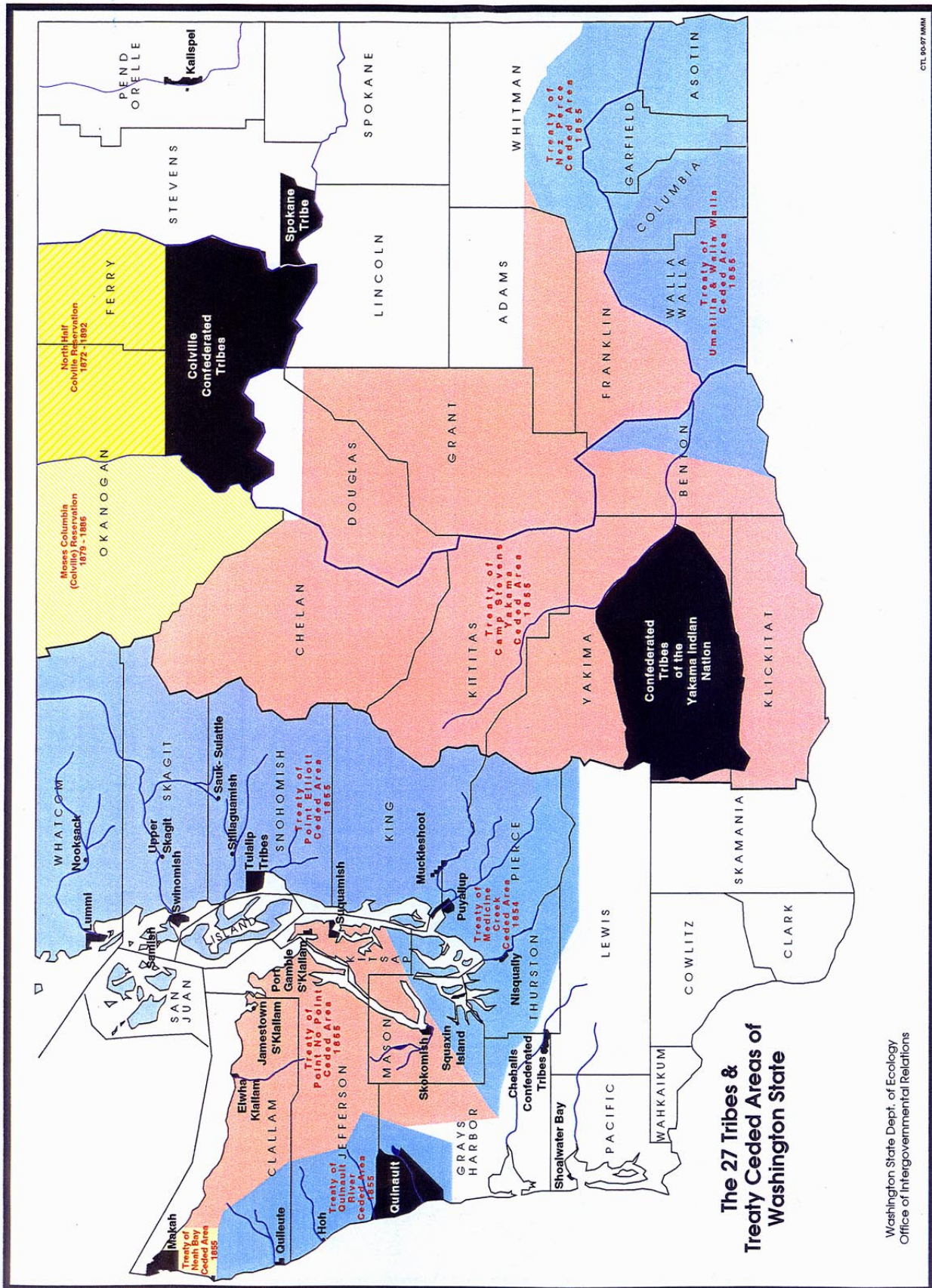
Jeopardize the continued existence of means to engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species.

Listed species means any species of fish, wildlife, or plant which has been determined to be endangered or threatened under section 4 of the Act. Listed species are found in 50 CFR 17.11-17.12.

Proposed species means any species of fish, wildlife, or plant that is proposed in the Federal Register to be listed under section 4 of the Act.

Take means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or attempt to engage in any such conduct. (Fish and Wildlife regulations have expanded this definition to include significant alteration or disturbance of habitat.) (From ESA 1973)

27 Tribes and Treaty Ceded Areas of Washington State





Washington State
Department of Transportation

Local Agency Environmental Classification Summary

Part 1 Project Description			
Federal Aid Project Number	Route	Date Created	Local Agency Project Number
Agency		Federal Program Title <input type="checkbox"/> 20.205 <input type="checkbox"/> 20.209 <input type="checkbox"/> Other	
Project Title			
Begin MP _____ KP _____	End MP _____ KP _____	Miles _____ KM _____	Townships _____ Ranges _____ Sections _____
County	Water Resource Inventory Area (WRIA) No. & Name		Within Puget Sound Basin? <input type="checkbox"/> Yes <input type="checkbox"/> No
Project Description			

Part 2 Environmental Classification	
NEPA <input type="checkbox"/> Class I - Environmental Impact Statement (EIS) <input type="checkbox"/> Class II - Categorically Excluded (CE) CE Type (from 23 CFR 771.117) _____ <input type="checkbox"/> Projects Requiring Documentation (Documented CE) (LAG 24.22) <input type="checkbox"/> Class III - Environmental Assessment (EA)	SEPA <input type="checkbox"/> Categorically exempt per WAC 197-11-800 CE Type (from SEPA Checklist) _____ <input type="checkbox"/> Determination of Non-Significance (DNS) <input type="checkbox"/> Environmental Impact Statement (EIS) <input type="checkbox"/> Adoption <input type="checkbox"/> Addendum <input type="checkbox"/> Supplemental

NEPA Approval Signatures

Local Agency Approving Authority

Date

Regional Local Programs Engineer / Assistant Secretary

Date

Federal Highway Administration

Date

Completed By (Print Official's Name)	Telephone (include area code)	Fax (include area code)
--------------------------------------	-------------------------------	-------------------------

Part 3 Permits and Approvals Required					
Yes	No	Permit or Approval	Yes	No	Permit or Approval
<input type="checkbox"/>	<input type="checkbox"/>	Corps of Engineers <input type="checkbox"/> Sec. 10 <input type="checkbox"/> Sec. 404 <input type="checkbox"/> Nationwide Type _____ <input type="checkbox"/> Individual Permit No. _____	<input type="checkbox"/>	<input type="checkbox"/>	Shoreline Permit
<input type="checkbox"/>	<input type="checkbox"/>	Coast Guard Permit	<input type="checkbox"/>	<input type="checkbox"/>	State Waste Discharge Permit
<input type="checkbox"/>	<input type="checkbox"/>	Coastal Zone Management Certification	<input type="checkbox"/>	<input type="checkbox"/>	Section 4(f)/6(f): Wildlife Refuges, Recreation Areas, Historic Properties
<input type="checkbox"/>	<input type="checkbox"/>	Critical Area Ordinance (CAO) Permit	<input type="checkbox"/>	<input type="checkbox"/>	SSP and TESC Plans Completed
<input type="checkbox"/>	<input type="checkbox"/>	ESA and EFH Compliance (See Part 5)	<input type="checkbox"/>	<input type="checkbox"/>	Water Rights Permit
<input type="checkbox"/>	<input type="checkbox"/>	Flood Plain Development Permit	<input type="checkbox"/>	<input type="checkbox"/>	Water Quality Certification - Sec. 401 Issued by _____
<input type="checkbox"/>	<input type="checkbox"/>	Forest Practice Act Permit	<input type="checkbox"/>	<input type="checkbox"/>	Tribal Permit(s), (If any) _____ _____
<input type="checkbox"/>	<input type="checkbox"/>	Hydraulic Project Approval			
<input type="checkbox"/>	<input type="checkbox"/>	Local Building or Site Development Permits			
<input type="checkbox"/>	<input type="checkbox"/>	Local Clearing and Grading Permit			
<input type="checkbox"/>	<input type="checkbox"/>	Natl. Historic Preservation Act - Section 106	<input type="checkbox"/>	<input type="checkbox"/>	Other Permits, including GMA (List): _____ _____ _____ _____
<input type="checkbox"/>	<input type="checkbox"/>	National Pollutant Discharge Elimination System (NPDES) Baseline General for Construction			
<input type="checkbox"/>	<input type="checkbox"/>	ROW Acquisition Required			

Part 4 Environmental Considerations	
Will the project involve work in or affect any of the following? Identify proposed mitigation. Attach additional pages or supplemental information if necessary.	
<p>1. Air Quality - Identify any anticipated air quality issues.</p> <p>Is the project included in the Metropolitan Transportation Plan? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If Yes, date Metropolitan Transportation Plan was adopted. _____</p> <p>Is the project located in an Air Quality Non-Attainment Area or Maintenance Area (for carbon monoxide, ozone, or PM10)? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Is the project exempt from Air Quality conformity requirements? <input type="checkbox"/> Yes <input type="checkbox"/> No (If Yes, identify exemption below.)</p>	
<p>2. Critical/Sensitive Areas - Identify any known Critical or Sensitive Areas as designated by local Growth Management Act ordinances.</p> <p>a. Aquifer Recharge Area, Wellhead Protection Area, or Sole Source Aquifer. If located within a sole source aquifer, is project exempt from EPA approval? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>b. Geologically Hazardous Area</p> <p>c. Habitat. List known fish and wildlife species present and describe general habitat.</p> <p>d. Are wetlands present within the project area? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, estimated area of impact in acre(s): _____</p>	

Part 4 Environmental Considerations - Continued**3. Cultural Resources/Historic Structures** - Identify any historic, archaeological, or cultural resources present with the project's area of potential effects.Does the project fit into any of the exempt types of projects listed in Sect. 24.82(a) of the LAG Manual? ☐ Yes ☐ NoIf **Yes**, note exemption below.If **No**: Date of OAHF consultation _____

Date of Tribal consultation(s) (if applicable) _____

Adverse affects on cultural/historic resources? ☐ Yes ☐ No

If Yes, date of approved Section 106 MOA _____

4. Flood Plains or WaysIs the project located in a 100-year flood plain? ☐ Yes ☐ NoIf yes, is the project located in a 100-year floodway? ☐ Yes ☐ NoWill the project impact a 100-year flood plain? ☐ Yes ☐ No (If Yes, describe impacts and analysis conducted.)**5. Hazardous and Problem Waste** - Identify potential sources and type.Is the project likely to involve site clean-up? ☐ Yes ☐ NoWill the project create any hazardous waste? ☐ Yes ☐ No (If Yes, describe waste handling and disposal.)**6. Noise** - Identify potential sensitive receptors or previous mitigation commitments. Briefly describe your impacts to the sensitive receptor, if present.**7. Parks, Recreation Areas, Wildlife Refuges, Historic Properties, or Scenic Rivers/Byways, 4(f)/6(f) Lands** -

Identify any properties within the project limits and, if any are present, describe impacts to properties present.

Part 4 Environmental Considerations - Continued

8. Resource Lands - Identify any of the following resource lands within 300 feet of the project limits and those otherwise impacted by the project. Describe any impacts to any resource lands identified.

a. Agricultural

If present, is resource considered to be prime and unique farmland?

☐ Yes ☐ No

If Yes, date of approval from US Forest Service, Dept. of Agriculture.

b. Forest/Timber

c. Mineral

9. Rivers, Streams (Continuous, Intermittent), or Tidal Waters

a. Identify all waterbodies within 300 feet of the project limits or that will otherwise be impacted.

Fisheries WA Stream No. _____

Ecology 303d Report No. _____

Reason for 303d listing _____

Date of Report _____

b. Identify stream crossing structures by type.

10. Tribal Lands - Identify.

11. Visual Quality

Will the project impact roadside classification or visual aspects? ☐ Yes ☐ No (If Yes, identify the impacts.)

Part 4 Environmental Considerations - Continued

12. Water Quality/Storm Water

Has NPDES municipal general permit been issued for this WRIA? ☐ Yes ☐ No

Amount of existing impervious surface within project limits: _____

Net new impervious surface to be created as a result of project: _____

Existing water quality/quantity treatment for existing impervious surface? ☐ Yes ☐ No

Describe proposed water quality/quantity treatment for new and any existing impervious surface upon completion of project.

13. Previous Environmental Commitments

Have previous environmental commitments been made in the project area? ☐ Yes ☐ No

Describe commitments. If commitments are a result of permit conditions, identify issuing agency, permit number and date, and how commitments will be met.

14. Long-Term Maintenance Commitments

Are long-term maintenance commitments necessary for this project? ☐ Yes ☐ No

Identify.

15. Environmental Justice

Are minority and/or low income communities impacted by the project? ☐ Yes ☐ No (If Yes, identify the impacts.)

Part 5 Biological Assessment and EFH Evaluations

Answer **ALL** questions. Refer to the Part 5 Biological Assessment Checklist Instructions before completing this section.

Permits

1. Are any of the following environmental permits, as indicated in Part 2, required: HPA, 404 wetlands, or local clearing and grading, shorelines, or permits related to critical or sensitive areas ordinances? ☐ Yes ☐ No

Location

	2. Will any construction work occur within 0.5 miles of any of the following:	3. Does the project involve blasting, pile driving, concrete sawing, rock drilling, or rock scaling activities within 1 mile of any of the following?
Bald eagle nesting territories, winter concentration areas, or bald eagle communal roosts?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't Know	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't Know
Spotted owl management circles or designated critical habitat?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't Know	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't Know
Marbled murrelet nest or occupied stand, or designated critical habitat?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't Know	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't Know
Western snowy plover designated critical habitat?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't Know	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't Know
Federal threatened, endangered, proposed, or candidate plant species locations or documented habitat?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't Know	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't Know
Canada lynx habitat?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't Know	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't Know
Gray wolf habitat?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't Know	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't Know
Grizzly bear habitat?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't Know	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't Know
Brown pelican night roosts?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't Know	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't Know
Woodland caribou habitat?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't Know	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't Know
A mature coniferous or mixed forest stand?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't Know	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't Know

4. Will any construction work occur within 300 feet of Puget Sound, Strait of Juan de Fuca, or the Pacific Ocean? ☐ Yes ☐ No
5. Will any construction work occur within 300 feet of any permanent or intermittent waterbody, **which supports or drains into a listed fish supporting waterbody**? ☐ Yes ☐ No ☐ Don't Know
6. Will any construction work occur within 300 feet of any wetland, pond, or lake that is connected to **any** permanent or intermittent waterbody? ☐ Yes ☐ No ☐ Don't Know
7. Does the action have the potential to directly or indirectly impact designated critical habitat for salmonids (including adjacent riparian zones)? ☐ Yes ☐ No ☐ Don't Know

Stormwater

8. Does the project create **any** new impervious surface area? If yes, go to 8a. ☐ Yes ☐ No
- 8a. Will post-project stormwater treatment infiltrate, with pretreatment, all new impervious surface area; OR will stormwater treatment facility treat 140% times the area of new impervious surface area? ☐ Yes ☐ No ☐ Don't Know

Construction Activities

9. Will any construction waste materials (e.g., asphalt or concrete grindings or byproducts, construction-related chemicals, fill materials, or excavated materials) from the project be disposed of at a location other than a permitted disposal site? ☐ Yes ☐ No ☐ Don't Know
10. Will the project involve any in-water work? ☐ Yes ☐ No ☐ Don't Know
11. Will the project effect the water regime of, or utilize any water from a waterbody, which supports or drains into a listed fish supporting waterbody; or any wetland, pond, or lake? ☐ Yes ☐ No ☐ Don't Know
12. Will construction work occur outside the existing pavement? If Yes, go to 12a. ☐ Yes ☐ No
- 12a. Will construction activities occurring outside the existing pavement involve clearing, grading, filling, or modifications of vegetation or tree cutting? ☐ Yes ☐ No

Determination

If all the above questions were marked No (with the exception of Question 8a.), or if any of the above items were checked Yes or Don't know, but an adequate justification has been provided to support a no effect determination, then check **No Effect**. If any of the above items were checked Yes or Don't Know (with the exception of Question 8a.), a biologist is required to conduct a review and evaluate the project; complete the section 7 consultation process per section 24.7 of the LAG manual. Note: If a biologist is required to conduct a review and evaluate the project, this does not preclude a no effect determination.

- ☐ **No Effect** (The proposed project will have no effect on Federally listed or proposed species, and the proposed project will not result in the destruction or adverse modification of designated or proposed critical habitat).

NMFS USFWS

- ☐ NLTA Date of Concurrence

- ☐ LTAA Date BO Issued

Date of First 6 Mo. Update

Essential Fish Habitat Determination:

- ☐ No Effect

- ☐ Adverse Effect. Date of NMFS Concurrence _____

Analysis for No Effects Determination (Required if any item in Section 5 was checked Yes).

Part 6 FHWA Comments

Use Supplement Sheet if additional space is required to complete this section.

25.01 General Discussion

Since federal regulations do not allow the certification of right-of-way to be subdelegated, the Washington State Department of Transportation (WSDOT) has overall responsibility to the Federal Highway Administration (FHWA) for the acquisition of right-of-way on all FHWA funded transportation projects in the state.

For a current project to be eligible for federal funding on any part of the project, the project's right-of-way must be acquired in accordance with the requirements of this manual. (Right-of-way acquired prior to July 1, 1971, is exempt.)

To assure fair and equitable treatment of displaced persons ("displacees"), and encourage and expedite acquisitions by negotiations, the acquisition process is regulated by Chapter 8.26 RCW and WAC 468-100.

WSDOT may, by written agreement, use the services of land acquisition organizations of counties, municipalities, or other state or local governmental agencies for acquiring rights-of-way for FHWA projects. Any such organization may be used only if it is adequately staffed, equipped, and organized to provide such services, and if its practices and procedures are in substantial conformity with WSDOT accepted procedures.

It is the responsibility of WSDOT to fully inform political subdivisions of their responsibilities in connection with federally assisted transportation projects. It is essential that local agencies and WSDOT communicate freely and work closely together during the entire acquisition process to expedite projects and to assure that all federal and state requirements are met. Guidance is provided in the WSDOT *Right of Way Manual* (M 26-01).

The Local Agency Right of Way Coordinator (LA Coordinator) should be contacted immediately when it is determined that the local agency project requires the use of WSDOT's right of way. The LA Coordinator will advise the local agency of the process and timeline needed to acquire sufficient legal rights to construct and operate on WSDOT property. (See section 25.12 Property Management for more information)

Responsibilities for non-project related (program) approval actions (FHWA (F), State (S), or Local CA Agency (L)) are shown below.

Action Non-NHS

- | | |
|--|-----|
| a. Non-highway Use and Occupancy of Right-of-Way | S/L |
| b. Air Space Agreements | S/L |
| c. Disposal of Right-of-Way No Longer Needed | S/L |
| d. Temporary Use of Right-of-Way | S/L |
| e. Disposal of Access Control and Relinquishment of Right-of-Way | S/L |

Project related approval actions.

Action Non-NHS

- | | |
|-----------------------------------|-----|
| a. Use of Fee Negotiators | S/L |
| b. Interest on Right-of-Entry | S/L |
| c. Hardship and Protective Buying | F |
| d. Use of Fee Attorneys | S/L |
| e. Appraisal Fees | S/L |
| f. Land Service Facilities | S/L |
| g. Right-of-Way Certificates | S/L |

.011 WSDOT Services. WSDOT is committed to an ongoing program which will provide effective assistance and guidance to local acquiring agencies. To this end, WSDOT will designate a Local Agency Right-of-Way Coordinator (LA Coordinator) in each region to provide information and establish appropriate state staff contacts; provide training and educational opportunities for local agencies through workshops and acquisition course offerings; and provide mutually acceptable technical and advisory services as necessary to accomplish the acquisition program.

WSDOT will consult and advise the local agency concerning real property acquisition activities to ensure that right-of-way is acquired in accordance with provisions of state and federal laws and FHWA directives.

At the earliest possible date, the local agency should advise the Region LA Coordinator of the need for WSDOT assistance. If WSDOT is asked to perform the appraisal, negotiation, or relocation functions, the local agency should obtain the estimated cost of such assistance from the Region LA Coordinator and include it in the Local Agency Agreement. The Coordinator will arrange for the preparation of an agreement if WSDOT has the personnel available to acquire the necessary right-of-way (Appendix 25.155). WSDOT will furnish the local agency with an estimate of the cost of WSDOT's services.

When WSDOT provides these services, WSDOT will prepare all necessary documentation and certification.

.012 Consultant Services. When the local agency does not have adequate staff to perform appraisal, negotiation or relocation functions, it may contract for these services and obtain federal participation in the costs.

The local agency should contact the Region Local Programs Engineer for assistance in preparing any contract for services to assure FHWA participation in the contract. FHWA has determined the consultant agreements for right-of-way services must meet the consultant contracting requirements as described in Chapter 31 “Using Consultants.” See Chapter 31 Appendixes for sample consultant agreements for appraisal and negotiation.

25.02 Right-of-Way Acquisition Procedures

Before requesting authority to acquire right-of-way, the local agency must have secured approval of acquisition procedures (Appendix 25.142). Acquisition procedures are submitted to the Region Local Programs Engineer for review prior to final execution by the local agency. Highways and Local Programs forwards the procedures through the Region LA Coordinator for approval. The local agency will be approved to acquire right-of-way based upon the submitted procedures. The level at which an agency will be approved will be dependent upon the agency’s staff qualifications. An agency with minimal staff may be approved to acquire a single project with direct supervision by the Region LA Coordinator. Highways and Local Programs notifies the local agency of the approval, with a copy to the Region LA Coordinator. Periodic reviews of procedures will be conducted on agency’s acquiring right-of-way on federal aid projects. Procedures should include the following:

- a. Agreement to conform with state and federal laws and FHWA regulations. The agency should agree to follow the state’s *Local Agency Guidelines Manual (M 36-63)* and *Right-of-Way Manual (M 26-01)* or the agency’s own manual if they have a WSDOT approved right-of-way manual.
- b. A listing of the positions performing the separate functions of program administration, appraisal, appraisal review, acquisition, relocation, and property management.
- c. A listing of current staff filling the above positions and a brief statement of their qualifications. (See minimum qualifications for approval, appraisal review, and acquisition in this chapter)
- d. A policy for handling administrative settlements including the approving authority(s) and process.
- e. Appraisal waiver process (see Section 25.051)

.021 No Right-of-Way Acquisition. Local agencies, after determining that new right-of-way will not be required for the current project, need only check the appropriate box on the project prospectus (see Chapter 21). If it is later determined that right-of-way is required, a Right-of-Way Project Funding Estimate (Appendix 25.143) or a True

Cost Estimate (Appendix 25.144) must be prepared and the Region Local Programs Engineer and the Region LA Coordinator notified.

.022 Acquiring Right-of-Way. Acquisition of right-of-way may be performed by the following entities:

- By WSDOT on a local agency’s behalf. In this case, an agreement between WSDOT and the local agency will be prepared and approved by the Director of Real Estate Services.
- By a local agency that is adequately staffed, equipped, and organized to discharge its right-of-way responsibilities and has right-of-way procedures approved by WSDOT. Staff may consist of qualified contract personnel and/or licensed private firms (see RCW 18.85.010) in addition to or in lieu of regular employees of the agency.
- By another local agency that meets the requirements above.

25.03 Voluntary Acquisition

A unique process called “Voluntary Acquisition”, under 49 CFR 24.101(a)(2), different from “Donation”, may on rare occasion be appropriate for acquisition of property, but only under the following circumstances.

- If the properties are not acquired, the project will not proceed
- Condemnation will not be used for any reason on the entire project
- All parcels will be under the same restrictions, and must be acquired through this process

If these circumstances appear to apply to a project, the Voluntary Acquisition process may apply, but must be coordinated through the LA Coordinator with HQ Real Estate Services.

25.04 Funds for Right-of-Way

.041 Acquisition With Federal Funds. Authorization of federal funds for right-of-way requires compliance with Chapter 14, FHWA approval of environmental documents, and the submittal of the following documents to the Region Local Programs Engineer.

- Local Agency Agreement Supplement.
- Estimate of probable project costs and expenses broken down by parcel. The True Cost Estimate (Appendix 25.144) can be used when all parcels are to be appraised or donated. The Right-of-Way Project Funding Estimate must be used if the agency wishes to make use of the appraisal waiver process (see Section 25.051).
- Right-of-Way plan.
- Relocation plan (if relocation is required — contact the LA Coordinator for assistance).

The right-of-way plans should at least show the following information and meet the requirements of WAC 332-130:

- Survey line or centerline for the alignment;
- The old and new right-of-way limits with sufficient ties to the survey line to allow for legal descriptions of the areas to be acquired;
- Show all rights to be acquired, for example, easements and permits;
- Show the ownership boundaries of the parcels with rights to be acquired;
- Parcel identification number should be shown;
- Show the area of the parcel to be acquired; and
- Show the area of the remainder.

All plan sheets shall carry the seal and signature of a registered Professional Engineer or land surveyor in accordance with RCW 18.43.070 and RCW 58.09. If the plan makes a land boundary determination, it should be approved by a PLS.

Once FHWA approval has been obtained, the Assistant Secretary for Highways and Local Programs will notify the local agency of authorization to acquire right-of-way. No acquisition costs are eligible prior to this authorization.

.042 Acquisition With Local Agency Funds. If federal funds are to be used in any part of the project, federal guidelines for acquisition of the right-of-way must be followed. For projects that involve local agency funds only for right-of-way acquisition, the Local Agency must have the following documents prior to starting the acquisition process:

- Right-of-way plan; (See section .041 for minimum requirements)
- Relocation plan (if relocation is required, the relocation plan must be submitted to the Region Local Programs Engineer. **The local agency need not wait for written authorization to acquire right-of-way.**

A copy of the right-of-way plan must be made available at the time of certification. It is advisable, but not required, to submit a copy to the LA Coordinator through the Region Local Programs Engineer for review. This review will help minimize potential problems which surface during the certification process.

.043 Acquisition in Advance of NEPA Clearance. There are four circumstances under which right-of-way can be acquired in advance of NEPA clearance:

- a. An agency may use its own funds to purchase R/W prior to NEPA clearance and may apply the purchase price (or if donated, the fair market value) toward their share of project costs, as long as they meet the requirements of 23 CFR 710.501(b). They cannot be reimbursed for these project costs, however.

- b. An agency may use its own funds to purchase R/W prior to NEPA clearance and be reimbursed. HOWEVER, they must meet the very stringent requirements of 23 U.S.C. 108 (c)(2)(c & d), as explained in 23 CFR 710.501(c). This option (which requires the Governor's and EPA's sign-offs) will be seldom used.
- c. An agency may purchase R/W prior to NEPA clearance under the protective buying and hardship acquisition provisions, as per 23 CFR 710.503, and be reimbursed. Note, however, that while these purchases are in advance of formal NEPA clearance of the project, individual clearance via a Categorical Exclusion is required. Consequently, although the project has not yet been cleared, the individual parcels have been cleared.
- d. An agency may purchase R/W prior to NEPA clearance under the corridor preservation provisions of 23 CFR 630.106 (3) & (4) and be reimbursed. This process is similar to the process for protective buying (see C above). Generally, this is only done for parcels which will not require any displacement. Note, however, that as with hardship and protective buying, these purchases are in advance of formal NEPA clearance of the project and individual clearance via a Categorical Exclusion is required.

25.05 Appraisal

The requirements pertaining to appraisal of property to be acquired are given in Chapter 4 of the WSDOT *Right of Way Manual*, M 26-01. If desired, a listing of WSDOT approved fee appraisers and appraisal reviewers is available from the Region LA Coordinator.

The appraiser shall be an experienced, qualified appraiser. As a minimum, an appraiser should have a college degree or four years of active experience in the real estate field leading to a basic knowledge of real property valuation, or any combination of such experience and college study to provide a total of four years beyond high school graduation. An appraiser who is qualified under WSDOT criteria will be considered qualified for FHWA projects. For FHWA projects subsequent to July 1, 1991, the appraiser must be certified per RCW 18.140 if the appraisal problem requires more than the comparative approach to value.

The appraiser shall prepare an Appraisal Report which is a written document containing at least the following:

- a. The purpose of the appraisal which includes a statement of the estimated value and the rights or interests being appraised.
- b. Identification of the property and its ownership.
- c. A statement of appropriate contingent and limiting conditions if any.
- d. An adequate description of the neighborhood, the property, the portion of the property or interest therein being acquired, and the remainder(s) if any.

- e. Identified photographs of the property including all principal above-ground improvements or unusual features affecting the value of the property.
- f. A listing of the buildings, structures, fixtures, and other improvements which the appraiser considered part of the real property to be acquired.
- g. The estimate of just compensation for the acquisition. In the case of a partial acquisition, allocate the estimate of just compensation for the property to be acquired and for damages to remaining property in either the report or a separate statement.
- h. The data and analyses (or reference to same) to explain, substantiate, and document the estimate of just compensation.
- i. The date to which the estimate of just compensation applies.
- j. The certification, signature, and date of signature of the appraiser.
- k. Other descriptive material (maps, charts, plans, photographs).
- l. The federal aid project number and parcel identification.
- m. Report of appraiser contact with owner.

Sample appraisal report forms can be found in Appendix 25.145.

.051 Appraisal Waiver. In certain cases, an appraisal can be waived. To qualify the just compensation, based on the Right-of-Way Project Funding Estimate or its equivalent, must be \$10,000 or less per parcel. The acquisition must be uncomplicated and the only damages will be minor cost to cure items.

In such instances where the appraisal is waived, just compensation should be based on comparable sales. All data used to arrive at just compensation must be included in the project file. When the waiver is used, it is important that the local agency determines that the offer being made is fair and equitable. The owner must be informed that an appraisal was not done. If the owner wants an appraisal, the local agency is required to have an appraisal completed per guidelines of this section. See Appendix 25.146 for a sample appraisal waiver procedure.

.052 Appraisal Review. The requirements pertaining to appraisal review of the property to be acquired is given in Chapter 5 of the WSDOT *Right of Way Manual*, M 26-01.

The reviewing appraiser should be knowledgeable of the property values in the project area. The depth of review should be in direct relationship to the difficulty of the particular appraisal. The reviewing appraiser must be either a WSDOT Review Appraiser, on the approved list of review appraisers maintained by WSDOT or a permanent employee of the acquiring agency who is authorized by the approved right-of-way procedures to review appraisals. To qualify as an agency review appraiser, an individual must

at a minimum be a Certified General Appraiser with the Washington State Department of Licensing and have successfully completed at least one approved appraisal review training class.

The reviewing appraiser should field inspect the property appraised as well as the comparable sales which the appraiser(s) considered in arriving at the fair market value of the whole property and of the remainder(s), if any. If a field inspection is not made, the file shall contain the reason(s) why it was not made.

The reviewing appraiser shall examine the Appraisal Reports to determine that they:

- a. Are complete in accordance with the *Local Agency Guidelines* and contain the criteria required by the WSDOT *Right of Way Manual*, Chapter 4, Appendix 4-1 (Appraisal Guide).
- b. Follow accepted appraisal principles and techniques in the valuation of real property in accordance with existing state law.
- c. Include consideration of compensable items, damage, and benefits, but do not include compensation for items noncompensable under state law.

Prior to finalizing the estimate of just compensation, the reviewing appraiser shall obtain corrections or revisions of Appraisal Reports which do not substantially meet the requirements set forth in the *Local Agency Guidelines*. These shall be documented and retained in the parcel file.

The reviewing appraiser may supplement an Appraisal Report with corrections of minor mathematical errors as long as such errors do not affect the final value conclusion. The reviewer may also supplement the appraisal file where the following factual data have been omitted:

- a. Project and/or parcel number.
- b. Parties to transaction, date of purchase, and deed-book reference to sale of subject property and comparables.
- c. Statement that there was no sale of subject property in the past five years.
- d. Location, zoning, or present use of subject property or comparables.

The reviewing appraiser shall initial and date corrections and/or factual data supplements to the Appraisal Report. The reviewing appraiser may conclude a value other than that concluded in the appraisal only if the conclusion is supported by relevant market data and analysis in the review document.

The reviewing appraiser shall place in the parcel file a signed and dated statement (Appendix 25.147) setting forth:

- a. An estimate of just compensation including, where appropriate, the allocation of compensation for the property acquired and for damages to remaining property.

- b. A listing of the buildings, structures, fixtures, and other improvements on the land which were considered part of the property to be acquired.
- c. A statement that the reviewing appraiser has no direct or indirect present or future interest in such property or in any monetary benefit from its acquisition.
- d. A statement that the estimate has been reached independently, without collaboration or direction, and is based on appraisals and other factual data.

It is the responsibility of the **agency** to set Just Compensation. This can be accomplished by adding a line to the bottom of the review appraiser's certificate as shown in Appendix 25.147.

25.06 Title

The agency will acquire evidence of the condition of title for all properties from which rights are to be acquired. It is suggested that a title report be ordered from a title company and the title to the property acquired cleared so that a policy of title insurance can be issued showing title vested in the agency subject only to those exceptions which can reasonably be accepted. If a title company is not used to provide this information, the acquisition file must include sufficient documentation to validate the signatories on the instruments and show that the interest acquired is free from unreasonable encumbrances.

In general, the elements necessary to acquire the needed interest are:

- a. Acquisition instruments signed by all parties with an interest in the fee title.
- b. Releases from mortgages and deeds of trust as the agency determines to be reasonable.
- c. Releases of encumbrances, such as easements, which adversely impact the rights being acquired.
- d. Releases of priority liens, such as material man's lien, judgments, state tax liens, and federal tax liens.

25.07 Negotiations

Various requirements in negotiating an acquisition of property are found in Section 3-4.1C of the *WSDOT Right of Way Manual*, M 26-01.

If a local agency uses a consultant fee negotiator, the negotiator must meet the applicable state licensing requirements (verify with the Department of Licensing).

For local agency staff to be approved to acquire property without direct supervision by the LA Coordinator, they must have either an Associate Degree in real estate or a Bachelor Degree or equivalent experience. In addition, they must have two years full time experience in real estate acquisition, sales leasing, appraisal, title, escrow or property management. One year of experience must be in eminent domain acquisition. Additional experience in eminent domain acquisition can replace education on a one for one basis.

Local agencies using staff to negotiate who do not have the necessary qualifications must work closely with the LA Coordinator as explained in the Procedures Approval letter. At a minimum, all offers must be reviewed by the LA coordinator before presenting them to the property owner.

A separation of functions maintains the integrity of the acquiring agency's transactions. Thus, the appraisal, appraisal review, and negotiations for a parcel are performed by three different persons. Recognizing the fact that the use of two separate individuals as appraiser and negotiator on a low-value taking can be both difficult and expensive, the use of a single individual to both appraise and negotiate a parcel is permitted where the value of the acquisition is \$10,000 or less. It should be noted that the appraisal shall be reviewed prior to negotiations, and the review appraiser shall be neither the appraiser nor the negotiator.

Before initiating negotiations for real property, the agency shall establish the just compensation which shall not be less than the approved appraisal of the property and shall make a written offer to acquire in that amount. Appraisals are not required if the owner has indicated a willingness to donate the right-of-way after being informed of their right to receive just compensation.

A donation may be accepted only after the owner has waived in writing their right to just compensation. (See appendix 25.148) This applies to individuals, businesses, corporations, and other private entities. Donations from government agencies are exempt from these requirements.

Right-of-way obtained through normal zoning, subdivision or building permit procedures requiring the donation or dedication of strips of land may be incorporated into a federal aid project without jeopardizing participation in other project costs.

The agency must notify the property owner of the availability of a statutory evaluation allowance not to exceed \$750 to help defray the owner's expenses actually incurred in evaluating the agency's offer.

When negotiations are complete, the negotiator shall keep in the project file a signed statement for each parcel that:

- a. The written agreement embodies all considerations agreed to by the negotiator and the property owner.
- b. The negotiator understands that the acquired property is for use in connection with a federal aid transportation project.
- c. The negotiator has no direct or indirect interest in the property or in any monetary benefit from its acquisition, at present or in the future.
- d. The agreement has been reached without any type of coercion.

.071 Negotiations by Mail. If no relocation is involved, the local agency may conduct right-of-way negotiations as follows:

- a. Mail to the owner the fair-offer letter, a summary statement (explains nature of acquisition, conditions affecting remainder after construction, and other

pertinent details which would have been explained in a face-to-face meeting with owner), the document of acquisition (deed, easement, or other document required for signature), property plat or sketch showing take and effects on remainder, and a copy of an acquisition brochure.

- b. Within about two weeks, make a follow-up phone call (documented in file). Answer questions or, if owner requests it, make an appointment for personal contact.
- c. Follow normal procedures for further negotiations.

.072 Acquisition of contaminated properties. The agency should take reasonable care to determine if properties needed for a project are contaminated. In the case where properties being acquired by the agency will become part of a state highway the agency must involve WSDOT in the acquisition process as early as possible to insure that the property will be in an acceptable condition for WSDOT to accept the transfer of ownership.

25.08 Donated Property

Donations of right of way can be accepted only after the owner has been notified of their rights to receive just compensation. A signed donation statement must be included in each parcel file (Appendix 25.148) Section 323 of 23 U.S.C. provides for using the value of donated lands as part of the match against an agency's contribution to the project. Certain conditions need be met.

- The credit may only be applied to a federal aid project if Federal Financial assistance was not used in **any** form to acquire the land. Credit to the matching share may not exceed the matching share of costs for that project and excess costs may not be utilized on other projects.
- The donation must be related to the project requiring the donated land.
- Donations of privately owned real estate made after April 2, 1987, and subsequent to NEPA clearance, are eligible for credit purposes.
- Donations of publicly owned real estate after June 8, 1998, are eligible for credit purposes.

For sample donation letters, see Appendix 25.148.

25.09 Administrative Settlements

The Uniform Act requires that "The head of a federal agency shall make every reasonable effort to expeditiously acquire real property by negotiation." Negotiation implies an honest effort by the acquiring agency to resolve differences with property owners. Additionally, the legislative history of the Uniform Act indicates that offers can be flexible, and there is no requirement that they reflect a "take it or leave it position." Negotiations should recognize the inexact nature of the process by which just compensation is determined. Further, the law requires an attempt by agencies to expedite the acquisition of real property by agreements with owners and to avoid litigation and relieve congestion in the courts.

In addition to the mandates of the Uniform Act, there are significant cost savings which can be realized through an increased use of administrative and legal settlements. Cost savings are in the areas of salaries, witness fees, travel, per diem, court costs, etc.

FHWA and WSDOT encourage local agencies to carefully consider and maximize use of administrative settlements in appropriate situations.

An administrative settlement or stipulated settlement is a negotiated settlement of a right-of-way acquisition case in which the agency has administratively approved payment in excess of fair market value as shown on the agency's approved determination of value.

- a. Any administrative settlement which exceeds the fair market value must be documented and thoroughly justified in order to be eligible for federal aid funds. The rationale for the settlement shall be set forth in writing. The extent of written explanation is a matter of judgment and should be consistent with the circumstances and the amount of money involved. If the local agency has any doubt as to eligibility, it should obtain prior approval from WSDOT through the Region LA Coordinator.
- b. The local agency shall document the following and make it available for review by WSDOT if it is not already part of the agency's approved procedures:
 1. Identify the responsible official who has the authority to approve administrative settlements, and
 2. Describe the procedure for handling administrative settlements.
- c. The designated local agency representative may approve an administrative settlement when it is determined that such action is in the public interest. In arriving at a determination to approve an administrative settlement, the designated official must give full consideration to all pertinent information. The list below is a sample of items to be considered, it should not be used as a template. The settlement justification must include the circumstances of each individual parcel that convince the agency that an administrative settlement is in their and the public's best interest.
 1. All available appraisals, including the owner's, and the probable range of testimony in a condemnation trial.
 2. Ability of the agency to acquire the property, or possession, through the condemnation process to meet the construction schedule. Impact of construction delay pending acquisition.
 3. The negotiator's recorded information, including parcel details and the owner's rationale for increased compensation.
 4. Recent court awards in cases involving similar acquisition and appraisal problems.

5. Likelihood of obtaining an impartial jury in local jurisdiction, opinion of legal counsel where appropriate.
6. Estimate of trial cost weighed against other factors.

25.10 Relocation

The regulations governing relocation assistance are covered in Title 49, Code of Federal Regulations, Part 24.

The majority of local agencies will find that it is not economically feasible to maintain staff to perform the relocation function. Those agencies who have trained staff and are approved by WSDOT through the procedures process to provide relocation services may do so. All other agencies should contact their Region LA Coordinator for help in having WSDOT contract to provide relocation services or for advice on contracting with private consultants. WSDOT does not maintain a list of qualified relocation consultants.

If a project includes relocation, a relocation plan must be submitted prior to right-of-way funding authorization. Since relocation plans are unique to each project requiring them, no sample is provided. Contact the Region LA Coordinator for assistance in preparing relocation plans and carrying out relocation activities.

25.11 Right-of-Way Certification

After right-of-way acquisition has been completed and about one month before the federal aid project is to be advertised for contract, the right-of-way certification must be submitted to the Region Local Programs Engineer.

The Certification provides the following assurances.

- a. Right of Way sufficient to construct, operate and maintain the facility has been acquired
- b. Right of Way has been acquired in accordance with Uniform Act requirements
- c. Relocation Assistance has been completed in accordance with the Uniform Act

There are two categories of certifications that state sufficient rights have been acquired and the project is ready to be advertised and constructed.

- #1 **All Right-of-Way Acquired.** Legal possession has been obtained but trial or appeal of cases may be pending. All occupants have vacated the right-of-way and the agency has the right to remove any remaining improvements. (Appendix 25.149)
- #2 **Right to Occupy All Right-of-Way Acquired.** Trial or appeal of some parcels may be pending and some parcels may have right of entry or possession and use only. All occupants have vacated the right-of-way and the agency has the right to remove any remaining improvements. (Appendix 25.150)

In very unusual circumstances, and with prior approval of the LA Coordinator and FHWA, a third category of certification states that some right of way remains to be acquired.

- #3 **All Right-of-Way Not Acquired.** Acquisition of a few remaining parcels is not complete. All occupants of residences have had replacement housing made available to them in accordance with 49 CFR 24.204. The agency must adequately explain why construction of the project before acquisition is complete, is in the public good. The agency will ensure that occupants of residences, businesses, farms or nonprofit organizations who have not yet moved from the right-of-way are protected against unnecessary inconvenience or coercive action. All unacquired parcels will be identified and a realistic date given for completion of acquisition and relocation. An explanation of why the properties are not acquired and how they will be acquired by the given date is also required. Appropriate notification will be provided in the bid proposals identifying all locations where acquisition is not complete. (See Appendix 25.151)

Certifications with exception must be followed by a certification without exception when possession of all parcels is obtained.

The Highways and Local Programs Engineer will submit the certification request to the Regional Real Estate Services Manager for the federally mandated certification review. The Region LA Coordinator will visit the local agency and review the acquisition files for the project and determine if the right-of-way was acquired according to the guidelines. For a copy of the coordinators' worksheets and a Federal Aid Requirement Checklist showing the general areas reviewed by the coordinator, see Appendixes 25.152 and 25.153.

If the coordinator determines that the project is ready for certification, they will have the Real Estate Services Manager sign the certification form and return it to Highways and Local Programs for inclusion in the package to be transmitted to Olympia Service Center Highways and Local Programs for final processing. The coordinator will also provide the agency and Regional Highways and Local Programs with a letter detailing the findings of the review and any deficiencies that may have been noted.

If the coordinator determines that the project cannot be certified, a letter will be provided to the agency and the Regional Highways and Local Programs office detailing the deficiencies encountered and the corrective action required before certification can be completed.

25.12 Property Management

If using FHWA funding, the acquiring agency shall establish property management policies and procedures that will assure control and administration of excess lands and improvements acquired for right-of-way purposes. These procedures shall establish:

- a. Property records showing:
 1. An inventory of all improvements acquired as a part of the right-of-way;
 2. An accounting of excess properties acquired with FHWA funding;
 3. An accounting of the property management expenses and the rental payments received; and
 4. An accounting of the disposition of improvements and the recovery payments received.
- b. Methods for accomplishing the clearing of right-of-way when such clearance is performed separately from the control for the physical construction of the project.
- c. The methods for managing the rodent control program.
- d. The methods for employing private firms or public agencies for the management of real property.
- e. The methods for accomplishing the disposition of improvements through resale, salvage, owner retention, or other means.

If the agency permits an owner or tenant to occupy the real property acquired on a rental basis for a short term or for a period subject to termination by the agency on short notice, the amount of rent required shall not exceed the fair rental value of the property to a short-term occupier.

Property management activities shall be handled in a manner consistent with the public interest and designed to reflect the maximum long-range public benefit.

The agency is responsible for the preservation of the improvements and for reasonable safety measures when it has acquired ownership and possession of the property.

Should rights-of-way acquired with FHWA funds become excess, they may be disposed of only after FHWA approval. If the disposal is to a private party, the agency must determine fair market value (either through the appraisal process or by public sale), and either credit FHWA for its share of the net proceeds of the sale or use the Federal share of the net proceeds for activities eligible for funding under Title 23 of the United States Code for transportation purposes. A disposal may be made to a governmental agency for a public use without charge, and no credit to FHWA is required.

Uneconomic remnants acquired by the agency with federal funds but not incorporated into the right-of-way may be disposed of without FHWA approval, but a credit to FHWA is required in the same manner as described earlier in this section.

Disposition of property outside of right-of-way and valued at \$1,000 or less is allowed without credit to federal funds. FHWA will not participate in the local agency costs of the disposal.

Federal regulations provide for the use of airspace for non-highway purposes above, at, or below the highway's established gradeline, lying within the approved right-of-way limits. The

airspace may be put to various public and private uses, such as parks, play areas, parking, etc., as long as it is a proper operation and does not impose a safety hazard on the traveling public.

Where an acquiring agency has acquired sufficient legal right, title, and interest in the right-of-way of a highway on a federal aid system to permit the use of certain airspace, the right to temporary or permanent occupancy or use of such airspace may be granted by the state subject to prior FHWA approval.

If the use of airspace is contemplated, the Region LA Coordinator should be contacted for more detailed policies and procedures that must be considered.

25.13 Document Retention

The acquiring agency shall maintain all records of its right-of-way actions for at least three years after payment of the final voucher to demonstrate compliance with 49 CFR Part 24. In addition, a diary must be maintained wherein each individual involved in a relocation, negotiations, or property management function shall enter and initial a suitable description of each contact and other information concerning that function. Each entry shall clearly show the month, day, and year of the contact; the name of the individual who made such contact; and the name(s) of the individual(s) contacted. Upon request, the Region LA Coordinator will provide explanations and/or counseling as to what are considered adequate records.

25.14 Appendixes

- 25.142 Right-of-Way Procedures
- 25.143 Right-of-Way Project Funding Estimate Sample
- 25.144 True Cost Estimate Sample
- 25.145 Appraisal Report Forms (Sample)
- 25.146 Appraisal Waiver Procedure (Sample)
- 25.147 Review Appraiser Form (Sample)
- 25.148 Donation Statements (Sample)
- 25.149 Certification #1 (Sample) — All Right-of-Way Acquired
- 25.150 Certification #2 (Sample) — Right to Occupy All Right-of-Way Acquired
- 25.151 Certification #3 (Sample) — All Right-of-Way Not Acquired
- 25.152 Coordinators Worksheets (Sample)
- 25.153 Federal Aid Requirement Checklist
- 25.154 Process Flow Chart
- 25.155 Governmental Agreement For Aid

26.1 General Discussion

Under Public Law 105-178 (TEA-21), a 10 percent National goal was established for the participation of Disadvantaged Business Enterprises (DBEs) in transportation contracting, in an effort to ensure equal opportunity in transportation contracting and address the effects of past and current discrimination. Requirements of the DBE Program, as prescribed in 49 CFR Part 26, apply to all recipients (and subrecipients) of highway, transit, and airport funds.

A local agency, when participating in programs funded in whole or in part with funds made available by the Washington State Department of Transportation (WSDOT), must either adopt WSDOT's DBE Plan, or develop an equivalent plan. The local agency equivalent plan must have the approval of WSDOT's Office of Equal Opportunity and the Federal Highway Administration (FHWA).

While WSDOT's Office of Equal Opportunity (OEO) has the overall responsibility for administration and implementation of WSDOT's DBE Program, local agencies (as subrecipients) also have an important role to ensure that their Federally-assisted contracts are administered in accordance with the State's approved DBE Program Plan, which is available on WSDOT's website.

WSDOT's OEO, in coordination with the Operations Engineer for Highways and Local Programs, will conduct compliance reviews of the local agency's administration of the DBE Plan. A local agency that is found to be in noncompliance may be subject to formal enforcement action (suspense or loss of Federal funds and/or CA status). A finding of noncompliance will result for failure to comply with the requirements of WSDOT's DBE Plan.

Each Federally-assisted contract/subcontract must include the following assurance:

The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of USDOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

26.2 Procedures

- a. **Local Agency DBE Liaison Officer.** The local agency is responsible for ensuring program compliance and monitoring its contractor's DBE activities. To accomplish this, a DBE liaison officer must be appointed by the local agency. This liaison officer must be an administrator responsible to the chief executive of the agency. This administrator should have the authority to delegate the responsibility

to the people who perform the contractor compliance function. The liaison officer's duties are to ensure compliance with the DBE Plan by the local agency and by their contractors.

- b. **DBE Firm(s) Certification.** The Washington State Office of Minority and Women's Business Enterprise (OMWBE) is the sole authority in the State of Washington to perform certification of all minority business enterprises, women business enterprises, and socially and disadvantaged business enterprises for programs administered by any State, local, or Federal agency. This statutory authorization extends to and binds all USDOT DBE Program recipients in the State of Washington. Only DBE firms that are currently certified by OMWBE may be used by prospective bidders on Federally funded projects. A directory of certified DBE firms is maintained and published by OMWBE. A copy of the directory is available via WSDOT's web page or directly from OMWBE. Their address is:

Office of Minority and Women Business Enterprise
406 South Water
Olympia, WA 98504
Telephone: (360) 753-9693

- c. **Establishment of Project DBE Goals.** The Highways and Local Programs Project Development Engineer will review each project to determine if it involves work elements that are conducive to DBE participation. To initiate this review, the local agency must submit an engineer's estimate with their suggested DBE goal to the Regional Local Programs Engineer when the contract work is determined. The estimate must show the item quantities and costs of the project.

If a local agency has any other projects tied to a federally funded project which utilizes one set of bid documents, the total project is considered a federal aid project for DBE goal setting purposes.

The goals for federal aid projects will be set under one of the following categories based on the projected participation level during the year to achieve the overall goal:

- Voluntary Goal
- Mandatory Goal
- Zero Goal

The Highways and Local Programs Operations Engineer will then establish a voluntary or mandatory DBE goal for the project. The methodology employed by WSDOT and its Highways and Local Programs Service Center in determining state and local agency project contract goals is as follows:

A. Elements

1. Geographical location of the project;
2. Type(s) of work included in the project, i.e., structure, roadway, new construction;
3. Availability of DBEs to perform the type(s) of work;
4. Potential subcontractable items of the work; and
5. Total dollar value of the contract.

The attainment accomplished through this analysis will be reviewed annually to determine the appropriateness of the method of setting goals.

B. Goal Setting Process

1. Review the department's overall DBE goal and the means to meet the goal (Refer to WSDOT's DBE Plan: XVIII, Overall DBE Goals and XXIII, Means to Meet the Overall DBE Goal);
2. If the contract includes federal funds, a DBE goal is considered;
3. If the contract amount is under \$100,000.00 then no goal is set. (However, if the work is such that the prime contractor has a distinctly separate class of work available, and meets the requirement for the prime to do 30% of the work, a goal may be considered);
4. The bid items are sorted by pre-qualification work classes and the total estimated dollar amounts to help identify opportunities for subcontracting;
5. Prime contractor work is assumed to be one class (the largest) unless two classes are needed to total a minimum of 30% of the total contract;
6. Mobilization nor specialty work is considered for subcontracting;
7. The remaining work is totaled, both as a percentage and a dollar amount. It is then divided by two (2). (50 percent of the total identified subcontractable items would be available for DBE firms, while the other 50 percent would be available for non-DBE firms); and
8. Ensure that DBE firms are ready, willing, and able to perform the work at the geographic location and time of the project.

If a local agency feels the project goal set by the Highways and Local Programs Operations Engineer is inappropriate, they may submit a request to have it changed. This request must be accompanied by justification based on the above criteria for establishing the contract goal.

d. **DBE Provisions in the Plans, Specifications, and Estimate (PS&E).**

After the goal has been determined, the applicable WSDOT General Special Provision (GSP), for the type of goal set as outlined above shall be included in the PS&E. These GSPs are available on the WSDOT website or from the Regional Local Programs Engineer. Only the WSDOT GSPs are approved for use on an FHWA funded project.

To complete the DBE requirements in the PS&E, when a mandatory goal is established, Form 272-056A, "Disadvantaged Business Enterprise Utilization Certification," will be included. This form shall be in the proposal given to each bidder. This form is available from the Regional Local Programs Engineer. When a voluntary or zero goal is established the DBE utilization form is not required.

- e. **Bid Opening.** Each bid proposal must be reviewed to determine if the bid is responsive. For a contract with goals, each proposal shall contain the form "Disadvantaged Business Enterprise Utilization Certification" completed by the contractor.

Failure to complete this form will be considered as evidence that the proposal is unresponsive and, therefore, is not eligible for award.

- f. **Is the DBE Firm Certified by OMWBE?** The DBE firm named by the contractor in the bid proposal shall be certified as a DBE firm by OMWBE to be eligible for work on an FHWA funded project. (See b, above.) To verify whether a firm is certified as a DBE and eligible to perform work on an FHWA funded project, you must contact OMWBE at (360)753-9693 or at their website and document to the project file. To meet the goals for the project, DBE firms not certified at the time fixed for the bid opening will not be accepted by the local agency for participation, as a Condition of Award (COA) Contractor, in the project.

g. **Selection of the Successful Bidder**

- A. Selection of Successful Bidder (When a mandatory goal is established.)

1. The successful bidder shall be selected on the basis of having submitted the lowest responsive bid and, in order to be responsive, making good faith efforts to meet the DBE goal. The bidder can meet this requirement in either two ways:
 - a. The bidder can meet the established DBE goal, documenting commitments for participation by DBE firms sufficient for this purpose; or
 - b. If the bidder does not meet the established DBE goal, the bidder can document its adequate good faith efforts.

This means that the bidder must show that it took all necessary and reasonable steps to achieve the DBE goal, and by their scope, intensity, and appropriateness to the objective, the bidder could reasonably be expected to obtain sufficient DBE participation, even if the bidder were not fully successful in meeting the established DBE goal. Mere pro forma efforts are not considered “good faith efforts” to meet the DBE contract requirements.

2. Should the low and otherwise responsive bidder fail to attain the goal and provide adequate good faith effort documentation in the bid submittal, its bid may be rejected and the next low responsive bid accepted.
3. Should more than one bidder fail to meet the goal, WSDOT and its subrecipients will determine the adequacy of the low and otherwise responsive bidder’s submission in light of DBE participation attained by all bidders. This will be accomplished by comparing the low bidder’s submission to the average DBE participation by all bidders. When computing average DBE participation, only the amount of the DBE goal attainment which does not exceed the established goal shall be used. Should the low bidder’s DBE participation be lower than the average, the bid shall be considered nonresponsive and shall be rejected. If the lowest bid is rejected, the next lowest bid(s) shall be examined under the foregoing criteria until the contract is awarded or all bids are rejected. The following is an example of goal averaging.

	Example 1		Example 2	
	Total Bid	DBE Bid	Total Bid	DBE Bid
Low Bid	\$ 99,000	13%	\$ 99,000	15%
Second	100,000	16%	100,000	13%
Third	100,500	15%	100,500	16%
Fourth	101,000	16%	101,000	16%
Total of DBE Bids		60%		60%
Average DBE Bid Goals		15%		15%

Each bidder shall submit a written assurance with their bid that they will meet the goal. The successful responsive bidder must provide the following information at the time of bid submittal:

1. The names of the DBE subcontractors proposed for contracts, including the OMWBE certification number.
2. The dollar value of each DBE subcontract proposed.

The successful bidder will obtain verification of OMWBE certification from the DBE business firm. The certification will identify the firm as being eligible for DBE status. The successful bidder will have the responsibility of verification with OMWBE that the DBE firm’s certification is current.

B. After Execution

WSDOT will request that the apparent low bidder submit a description of the specific items of the work each DBE subcontractor will perform. This description, dollar amount, and name of the DBE firm is identified in the award letter and made Condition of the Award (COA) of the contract.

In the event a bidder is unable to meet the assigned DBE contract goal, the bidder shall provide additional information regarding its good faith efforts to do so per the requirements of the contract. Good Faith Effort (GFE) documentation may be required after award and during the execution of the contract. GFE documentation may also be required during substitutions when a firm is unable or unwilling to perform. The bidder must document the steps taken to obtain participation which demonstrate *good faith efforts*, as outlined:

1. Evidence the bidders attended any presolicitation or prebid meetings that were scheduled by WSDOT to inform DBEs of contracting and subcontracting or material supply opportunities available on the project;
2. Evidence the bidder identified and selected specific economically feasible units of the project to be performed by DBEs in order to increase the likelihood of participation by DBEs;
3. Evidence the bidder advertised in general circulation, trade association minority and trade oriented, women-focus publications, concerning the subcontracting or supply opportunities;
4. Evidence the bidder provided written notice to a reasonable number of specific DBEs, identified from the OMWBE Directory of Certified Firms for the selected subcontracting of material supply work, in sufficient time to allow the enterprises to participate effectively;
5. Evidence the bidder followed up initial solicitations of interest by contacting the DBEs to determine with certainty whether they were interested. This may include the information outlined:
 - a. The names, addresses, and telephone numbers of DBEs who were contacted, the dates of initial contact, and whether initial solicitations of interest were followed up by contacting the DBEs to determine with certainty whether the DBEs were interested;
 - b. A description of the information provided to the DBEs regarding the plans, specifications, and estimated quantities for portions of the work to be performed;

- c. Documentation of each DBE contacted but rejected and the reason(s) for that rejection;
6. Evidence that the bidder provided interested DBEs with adequate information about the plans, specifications, and requirements for the selected subcontracting or material supply work;
7. Evidence the bidder negotiated in good faith with the DBE firms, and did not without justifiable reason reject as unsatisfactory bids prepared by any DBE;
8. Evidence the bidder advised and made efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance required by WSDOT or the contractor;
9. Evidence the bidders efforts to obtain DBE participation were reasonably expected to produce a level of participation sufficient to meet the goal or requirements of WSDOT;
10. Evidence that the bidder used the services of minority community organizations, minority contractor groups, local, state, and federal minority business assistance offices and other organizations identified by WSDOT and advocates for disadvantaged, minority, and women businesses that provide assistance in the recruitment and placement of disadvantaged, minority, and women business enterprises; and
11. Evidence the bidder used the services of WSDOT's DBE Supportive Services consultant.

C. Administrative Reconsideration

If WSDOT or its subrecipients determine that the apparent successful bidder/offer or has failed to make a good faith effort to meet the goal, WSDOT and its subrecipients will, before awarding the contract, provide the bidder/offer or an opportunity for administrative reconsideration.

1. As part of this reconsideration, the bidder/offer or will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so;
2. WSDOT's decision on reconsideration shall be made by an official who did not take part in the original determination that the bidder/offer or failed to meet the goal or make adequate good faith efforts to do so;
3. The bidder/offer or shall have the opportunity to meet in person with said official to discuss the issue of whether it met the goal or made good faith efforts to do so;

4. WSDOT shall send the bidder/offer or a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so; and
5. The results of the reconsideration process is not administratively appealable to the USDOT.

- h. **Condition of Award Letter.** The condition of award letter carries the same contractual obligation as the contract specifications and is only required when a mandatory goal is established for the project. A condition of award letter appears as Appendix 46.42. The second, third, fourth, and fifth paragraphs must be included in the letter. The DBE work shall be shown in the fifth paragraph. If a portion of an item is sublet to a DBE and the remainder is done by the contractor or another subcontractor, the DBE's work must be shown in detail in the fourth paragraph of the letter. Also, any DBE suppliers and manufacturers shall be shown.

Send a copy of this letter and a copy of the "Disadvantaged Business Enterprise Utilization Certificate" to the Regional Local Programs Engineer as a part of the award documentation submittal explained in Chapter 46.

Attach a copy of the letter to the contract papers that you send to your contractor for signature. The Regional Local Programs Engineer shall be provided information on subletting by DBE contractors.

- i. **Between Award and Execution.** The contractor shall supply a contractors bidders list as described in the GSP's for all categories (voluntary, zero, and mandatory goals.) **The list shall include all firms that bid on prime contracts or bid or quote subcontracts (successful and unsuccessful) on USDOT-assisted projects, including both DBEs and non-DBEs.** The list shall also include the firms name and address.

- j. **Monitoring of the DBE During Construction.** The local agency must place special emphasis on the DBE requirements at the preconstruction conference. Changes to a condition of award letter shall be submitted in the form of a change order to the Regional Local Programs Engineer.

Project diary documentation of the DBE's activities on the project must be performed in the same manner as is done on the prime contractor and any other subcontractor's activities.

In addition to the project diary, the form "DBE On-Site Review" shall be completed by the CA Agency for every DBE condition of award (see Appendix 46.42):

- at the start of work, and/or
- at the peak period of work, and/or
- whenever changes in the performance of the work warrants its completion.

The review should be completed per on-site observations, documentation review, and interviews of contractor's personnel. This completed form becomes a part of the local agency's project records. Additional forms are available from your Regional Local Programs Engineer.

The WSDOT GSP, Disadvantaged Business Enterprise Participation, and Chapter 1 of the WSDOT Construction Manual shall be followed to ensure compliance with the DBE Plan.

In order to satisfy the contract goal, a DBE firm shall perform a commercially useful function. A commercially useful function is defined as: responsibility for executing a distinct element of contract work and carrying out those responsibilities by actually performing, managing, and supervising the work involved. The documentation in the project diary and on the DBE On-Site Review form is the information that the local agency will use to determine whether a DBE is performing a commercially useful function. If there is evidence that a DBE firm is not performing a commercially useful function, immediately contact your Regional Local Programs Engineer.

- k. **Prompt Payment.** Refer to Amendment Section 1-08, Prosecution and Progress (March 6, 2000) and RC W 60.28 for "Prompt Payment" requirements.

- l. **During Construction and Upon Completion.** For all federal aid projects the contractor shall submit Quarterly Report of Amounts Credited as DBE Participation, WSDOT Form 422-102 EF (Appendix 26.41), to the local agency. On this form, the contractor shows the actual amount paid to the DBE firm for the contract work. The local agency shall forward a copy to the Region Local Programs Engineer. This completed form is required quarterly and a final at the completion of the project must be submitted to the Headquarters Highways and Local Programs Project Development Engineer as specified on the form.

- m. **Records and Reports.** The local agency will maintain such records and provide such reports as necessary to ensure full compliance with the Plan.

Upon request from the OMWBE, WSDOT, or the USDOT, the local agency shall submit the records deemed necessary for inspection, auditing, and review purposes.

26.3 Consultant Agreement Goals

The Highways and Local Programs Operations Engineer will review each consultant agreement with an estimated cost over \$250,000 to determine if a DBE goal is applicable for the agreement. The goal setting process follows the same guidelines at the construction contract (see 26.2(c)) only it utilized the tasks outlined in the agreement in place of the bid items.

1. The Local Agency will as part of the advertisement, indicate the established DBE goal in their advertisement for proposals.
2. Responsiveness to the DBE goal shall not be determined prior to award. However, failure to meet goal attainment may be utilized as an evaluation criteria on past work performance.
3. The Consultant shall include in their response to a Request for Qualifications an Information Packet that identifies the potential subcontractors, both DBE certified and non-DBE firms.
4. The Consultant will submit a scope of work and cost estimate that will identify each subconsultant. The consultant will meet the project DBE goal, identifying each subconsulted element of work.
5. The monitoring of DBE participation will be tracked using the Quarterly Amounts paid DBE participants as discussed in 26.2(l).

Appendixes

- 26.41 Quarterly Report of Amounts Credited as DBE Participation
- 26.42 Disadvantaged Business Enterprise Utilization Certification

27.1 General Discussion

To effectively assure Equal Employment Opportunity (EEO), it is the policy of the Federal Highway Administration (FHWA) to require that all federal aid highway construction contracts include specific requirements to implement the Title VI Program, related civil rights laws and regulations. These specific requirements apply to contractors and all their subcontractors (not including material suppliers) holding subcontracts of \$10,000 or more. To be eligible for federal aid funds, the local agency must comply with the civil rights requirements.

The following statement shall be accepted by local agencies and contractors as their operating policy:

It is the policy of this Company to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, or disability. Such action shall include: employment upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, preapprenticeship, and/or on-the-job training.

Local agencies and their contractors must each designate an EEO officer to ensure compliance with the EEO Title VI, Section 504, and training policy.

The Washington State Department of Transportation (WSDOT) will monitor both the local agency and its contractors for compliance as part of the normal project management reviews and through contract compliance reviews of selected contracts.

The local agency, by signature to the Local Agency Agreement, agrees to the following:

- a. To assist and cooperate actively with the state in obtaining contractor and subcontractor compliance with the equal opportunity clause and rules, regulations, and relevant orders of the FHWA and/or Secretary of Labor.
- b. To furnish the state such information as it may require for the supervision of such compliance and otherwise assist the state in the discharge of its primary responsibility for securing compliance.
- c. To refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, as amended, with a contractor debarred from, or who has not demonstrated eligibility for, government contracts and federally-assisted construction contracts pursuant to the Executive Order and other pertinent rules, laws, and regulations.
- d. To carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the state, FHWA, or the Secretary of Labor pursuant to Part II, subpart D of the Executive Order.

In addition, the agency agrees that if it fails or refuses to comply with these undertakings, the state may take any or all of the following actions:

- Cancel, terminate, or suspend the Local Agency Agreement in whole or in part;
- Refrain from extending any further assistance to the agency regarding the failure or refusal to comply until satisfactory assurance of future compliance has been received from the agency; and
- Refer the case to the Department of Justice for appropriate legal proceedings.

The local agency must consult the WSDOT/APWA *Standard Specifications, Amendments, General Special Provisions*, and the WSDOT *Construction Manual* to administer the EEO and training programs.

27.2 Training

To meet federal requirements, each contract must comply with applicable GSPs and Form FHWA-1273.

Training goals are established by the Highways and Local Programs Operations Engineer on selected federal aid construction contracts. The goals are set based on the formula developed by WSDOT, and the goal setting process takes into account the following factors:

1. The dollar amount of the project (normally Highways and Local Programs will not set goals on projects of less than \$500,000).
2. Type of work. Project must lend itself to training.
3. Availability of minorities and women for training.
4. Geographic location of the project.
5. Duration of the work (normally Highways and Local Programs will not set training goals on projects of less than 60 working days).

The formula is a combination of opportunity and population ratings based on location. These are multiplied by the dollar amount of the project and provide a base figure for training hours. This is a base figure which is adjusted depending on the length of the project and the type of work. The Highways and Local Programs Operations Engineer determines the training hours, but the number of trainees is left to the discretion

of the local agency. The local agency must submit an engineer's estimate for the duration of the contract including estimated number of working days to the Region Local Programs Engineer as a basis for the Highways and Local Programs Project Development Engineer to set goals. (The training goals and DBE goals are established at the same time.)

If the local agency has a WSDOT approved EEO/On-the-Job Training (OJT) Plan which sets training goals, the agency may use those goals to establish specific project goals.

27.3 Contract Administration

.31 General. The local agency has the responsibility to:

- a. Conduct preconstruction conferences during which EEO and training Special Provisions for federal aid contracts are discussed with the contractor. (Emphasis should be made regarding the applicability of goal-by-craft versus average-of-all-crafts.)
- b. Ensure that the contractor posts and maintains notices and posters setting forth the contractor's EEO policy. A supply of OFCCP Poster No. 1420, Equal Employment Opportunity is the Law, shall be made available to the contractor.
- c. Monitor on-site compliance with the EEO and training Special Provisions of federal aid contracts.
- d. Ensure that their contractors locate, qualify, and increase the skills of minority groups, women employees, and applicants for employment as specified in the training provisions.
- e. Prepare and/or ensure the preparation of the required EEO and training reports.

.32 EEO Reports.

- a. PR 1391: This report is submitted by the contractor and subcontractors showing all the employees in the work force including an ethnic breakdown on their federal aid highway construction projects under construction during the month of July. The report is a summation of employees on their last payroll period preceding the end of July. The local agency retains this form in its project files.
- b. PR 1392: Summation of the July PR 1391 reports received from all contractors and subcontractors that were working on federally-assisted projects during the month of July. This report is prepared by the local agency and sent to the Region Local Programs Engineer by August 30. This report is due at WSDOT Headquarters Highways and Local Programs by September 10 annually.
- c. DOT Form 820-010 Monthly Employment Utilization Report: This report includes the total work hours for each employee classification in each trade in the covered area for the monthly report period. All Contractors/Subcontractors having contracts of

\$100,000 or more that are federally funded shall submit WSDOT Form 820-010 to the Local Agency by the **fifth of the month** during the term of the contract. The Contractors/Subcontractors shall maintain this information in their files for all federally and locally funded projects under \$100,000. The hours reported represent the contractor's and subcontractor's federal and nonfederal funded projects in the SMSA or EA per the GSP. The completed form will represent a work force greater than what is on your project if the contractor or subcontractor has another project in the same SMSA or EA.

To monitor the forms submitted during the term of the contract, the local agency will summarize a contractor's progress by completing the "Monthly Employment Utilization Report Worksheet" or a similar form. The results of the summary will show whether the contractor is meeting the employment percentages that appear in the GSP.

.33 Training Reports.

- a. Form 272-060: Federal Aid Highway Construction Annual Project Training Report, is maintained by the local agency's Project Engineer as trainees are approved. Question 10 is to be completed from the project payroll/trainee records. Form 272-060 is due in the Region Local Programs office by June 10.
- b. Form 272-061: Federal Aid Highway Construction Cumulative Training Report, extracts the information taken from Form 272-060. The Region Local Programs Engineer prepares this report which is due in the Headquarters by June 20.

27.4 Monitoring During Construction

- .41 EEO.** During the project construction, the local agency must monitor the contractor's performance to ensure compliance with its Title VI and Section 504 EEO policy. To accomplish this, the local agency must designate an EEO officer. The EEO officer's duties are to conduct reviews with the contractor, maintain records, reports, and required Title VI statistical data concerning the contractor's performance, and ensure that the local agency itself is in compliance with its EEO policy.
- .42 Training.** When training hours are assigned to the project, the local agency must verify that the trainee is on the project and is receiving beneficial training in accordance with the approved training program. When the trainees are on the project, the local agency shall periodically conduct interviews with them to determine if they are receiving the training as specified in the approved training program. The "Trainee Questionnaire" form or similar forms should be used to document the employee interviews and the contractor's compliance with the training requirement.

The contractor will submit certified monthly detailed invoices showing the related weekly payroll number, name of the trainee, total hours trained under the program, previously paid hours, hours due, and the dollar amount due this estimate. These invoices must be kept with the project records and will become part of the temporary final records to be retained for three years after acceptance of the project by WSDOT and FHWA.

27.5 Compliance Review

In addition to the selected compliance review of local agency contracts by WSDOT External Civil Rights (ECR), the Highways and Local Programs Operations Engineer's Office will review Title VI and Section 504 EEO and training compliance during its regular project management reviews. If, upon such examination, it is determined that further review is needed, the Olympia Service Center Highways and Local Programs Office may initiate a further investigation.

The evaluation of the local agency's and its contractor's compliance is based on the provisions included in the contract.

Forms

See Chapter 11 of the WSDOT *Construction Manual*.

new task, therefore saving time. An example of a task order agreement would be one for performing construction inspection over a two-year period.

- .48 Profit, Overhead, and Subconsultants.** Mark-ups will not be allowed on subconsultants. The maximum reserve fund for the consultant can be \$50,000 or 10 percent of the agreement, whichever is less. Overhead and profit is **no longer limited to 165 percent.**

An acceptable profit range varies from 17 percent to 35 percent of bare labor costs and is determined by the following:

- Degree of Risk.
- Nature of the work to be performed.
- Joint venture responsibility.
- Extent of the prime's investment. (The prime should receive no less than 50 percent of the total contract cost.) Hours necessary to manage subconsultants should be written into the agreement.
- Travel necessary for the consultant and its' subconsultants.
- Other criteria such as bonuses and B & O taxes eliminated from the overhead.
- Audit findings will need to verify the overhead request.

The final agreement must specify the maximum amount payable. The basis for establishing the maximum amount should be documented and provisions should be made for adjustment to the maximum amount to accommodate changes in the work distribution or workload.

31.5 Standard Agreement and Exhibits

When the cost of consulting services is \$10,000 or more, local agencies must use the Standard Consultant Agreement (see Forms). Standard agreement forms are available from the Regional Local Programs Engineer. The standard agreement was developed to allow the local agency to select the appropriate exhibits and assemble them into a complete agreement package for all types of consulting work. The agreement completion date (expiration date) shall be established based on the project schedule. The agreement completion date establishes the last possible date the consultant may work and be paid for that work utilizing federal funds. Any work performed after expiration of the agreement will be considered non-federally participating. It is of the utmost importance that the agency monitor the project completion date and extend the date by supplemental agreement, if appropriate, prior to the completion date. No supplement to the agreement will be allowed after the agreement has expired. Local agencies should limit agreements to a duration of two years, unless the scope of the work requires the agreement to extend beyond two years.

- .51 Exhibits.** Exhibits for the Standard Agreement are provided. The various payment methods, require their own exhibits. Examples of types of work for each agreement payment type have already been discussed under Section 31.47, "Payment Options." Most exhibits are common to any agreement, others require selection by the person creating the standard agreement.

31.6 Supplements to the Agreement

An agreement shall be supplemented in writing when work which falls outside the scope of the original agreement is requested, when supplemental language to the standard agreement is desired, or when there is a need for time extension or wage adjustment. This may be done by a supplemental agreement (see Forms).

The supplemental agreement should include:

1. A statement that the original agreement will be supplemented to add/change/amend conditions.
 2. A scope of work described in sufficient detail to clearly outline what additional work the consultant is to do or what changes are authorized to the existing scope.
 3. The mode of payment — i.e., cost-plus-fixed-fee, specified hourly rate, daily rate, and any indirect cost. (*Note:* Always include a maximum amount payable.) Section V of the original agreement should be reviewed prior to negotiating any supplements.
 4. A specific time for beginning and completing the project in calendar days or day and month of the year.
 5. A statement of whether subletting is authorized; if so, to whom, for what, and the amount payable.
 6. A summary of the estimated costs of the original agreement plus those of the supplement(s).
 7. Provisions that give both parties to the agreement the authority to act.
 8. Upon completion of an audit, a supplemental agreement shall be written to establish negotiated rates: Those rates will be applicable (retroactively) to the first 12 months of the agreement (and thereafter unless renegotiated).
- .61 Patent or Royalty Rights.** Agreements that involve research, developmental, experimental, or demonstration work may require patent or royalty rights. In this case, the Standard Agreement should be supplemented by adding the appropriate language to account for this.
- .62 Risk Management and Added Insurance Requirements.** The agency may change Section XIII of the Standard Agreement to reduce the requirement for Consultant Professional Liability from One Million Dollars to the amount of the Agreement, whichever is the lessor. This should be done for work that involves minimal risk, such as studies. For many consultant firms, covering the one million dollar liability would be an added cost to their overhead or directly to the project.

In the event the agency determines that added liabilities or an insurance policy are warranted beyond the amount allowed in the Standard Agreement, they should negotiate this with the Consultant **after** all other Agreement provisions have been negotiated. This ensures that engineering qualifications, rather than the ability to obtain insurance is the criteria for selection.

The agency will determine the sufficiency of insurance normally provided in the consultant's overhead costs, and will identify the costs beyond that amount on Exhibit H. This exhibit is not needed if the standard agreement provisions are used. These costs will be considered direct project costs, and will not be billed to an FHWA funded project. In the event that Exhibit H is warranted, it should be sent with the risk analysis to the Regional Local Programs Engineer for approval who will forward it to Headquarters for FHWA review, prior to execution by the agency and consultant.

The agency risk analysis should show that the work warrants this added cost and that consideration has been given to less costly solutions, including assuming the risk, or insuring the risk outside of the agreement as an agency cost, or adding a third tier of engineering overview to check the work.

To calculate the risk requires an ability to judge the likely amount of a jury's award if liability is determined. A suggested method is to determine the number of comparative cases presently existing within this state and to develop the probabilities based upon historic awards.

31.7 Oversight of the Agreement and Project Closure

WSDOT will review the documentation on selected projects and monitor the consultant selection procedures used by the local agency. The degree of monitoring will be determined by WSDOT and will depend on the nature and character of each project. The local agency shall assign one of its personnel as project administrator to work with the consultant. The project administrator's responsibilities are to:

1. Prepare supplements to existing agreements for services beyond the scope of the original agreement and include the agency's independent estimate of the costs for the work involved;
2. Ensure that no work is done or costs incurred until the agreements and supplements are approved by the approving authority and executed by the proper parties;
3. Conduct regular meetings with the consultant to track progress and identify potential concerns;
4. Act as a liaison between the agency and the consultant to assure compliance with the terms of the agreement, including OEO provisions and the use of mandatory forms;

5. Monitor the consultant's progress reports to ensure that problem areas are reported and corrective action taken;
6. Make sure that all work is within the agreement's scope of work;
7. Establish controls to monitor the time for completion of the agreement to ensure that the specified time limitations are not exceeded;
8. Ensure the accuracy of bills presented by the consultant and their consistency with the work performed;
9. Maintain cumulative cost records to assure that costs are allowable, allocable and reasonable. Track bills to ensure compliance with agreement and fixed fees (see Appendix 31.84 "Sample Invoice Tracking Sheet");
10. Establish controls to prevent overpayment of the Agreement and fixed fees;
11. Ensure that all terms and conditions of the agreement have been met prior to final release of the consultant.

.71 Invoicing. The invoice will include the following:

- By name, all employees that worked on the project during the billing period;
- The classification of each employee, the hours worked, the hourly wage rate, and the total wages paid;
- Direct nonsalary costs (Nonsalary costs should be supported for auditing purposes by copies of the invoice or billing instruments the consultant received for payment. These copies may be retained by either the consultant or the agency.).

The local agency may disallow all or part of a claimed cost which is not adequately supported by documentation.

.72 Documentation. Original documents may include but are not limited to signed time sheets, invoices, payroll records, rental slips, and gasoline tickets that support the costs billed to WSDOT. The consultant is responsible to account for costs and for maintaining records, including supporting documentation adequate to demonstrate that costs claimed have been incurred, are allocable to the agreement and comply with Part 31 of CFR 48. Time sheets should document hours worked, the billing rate of pay and must be signed by the supervisor or his designee and the employee. **Records will be retained for three years from the date of closure.**

.73 Closure. Upon completion of the work under the consultant agreement, the agency will ensure that all terms and conditions of the agreement have been complied with and that all services to be performed under the agreement have been completed prior to final release of the consultant. The local agency should evaluate the consultant's performance and retain this in their records (see Appendix 31.85).

Appendixes

- 31.81 Sample Advertisement
- 31.82 Sample Record of Negotiations
- 31.83 Information Required in Agreements for Non-CA Agencies
- 31.84 Sample Invoice Tracking Sheet
- 31.85 WSDOT Performance Evaluation Consultant Services
- 31.86 Sample Personal Services Contract for Appraiser
- 31.87 Sample Consultant Agreement for Negotiation Services
- 31.88 Independent Estimate for Consulting Services
- 31.89 Local Agency Standard Consultant Agreement (includes Exhibits A-1 Consultant and Agency Certification; A-2 Debarment Certification; A-3 Federal Fund Restrictions; A-4 Current Cost or Pricing Data; B-1 Scope of Work; B-2 Task Order Assignment; C-1 Lump Sum Payment; C-2 Cost plus Fixed Fee; C-3 Negotiated Hourly Rate; C-4 Provisional Hourly Rate; C-5 Cost per Unit of Work; D-1 Consultant Fee Determination Sheet - Lump Sum, Cost Plus Fixed Fee and Cost per Unit of Work; D-2 Consultant Fee Determination Sheet - Specific Rates of Pay; E Breakdown of Consultant Overhead Cost; F Payment Upon Termination of Agreement; G Subcontract Work; G-1 Subconsultant Fee Determination Sheet; G-2 Breakdown of Subconsultant Overhead Cost; H - Supplemental Language for Increased Insurance Requirement
- 31.90 Supplemental Agreement

32.1 General Discussion

The railroad grade crossing program has the following basic objectives:

- a. To reduce the accident frequency and severity at grade crossings.
- b. To improve operating efficiency.

The program focus is on adding protection to projects that demonstrate a need for safety and efficiency.

To assist in this effort, Congress dedicated a portion of the Highway Trust Fund for rail/highway crossing safety improvements. The funds are available at 100 percent federal.

The first alternative to be investigated for improving a grade crossing is closure and/or consolidation with nearby grade crossing. Crossing closure will eliminate train-vehicle accident potential and maintenance costs. Consolidation will reduce train-vehicle accident potential and maintenance costs. It is also possible that important accessibility may be reduced and unacceptable rerouting of vehicular traffic will result. Nevertheless, when improvement alternatives are considered, these factors should not preclude the consideration of crossing consolidation and the resulting benefits. Removal of crossing surfaces, erection of barriers, and other costs associated with closing a crossing are eligible for Section 646 funding.

It is the position of the Federal Highway Administration that funding on railroad-highway grade separation projects will only be approved where closure of associated at-grade crossing(s) is imminent. When the grade separation project is opened, the at grade crossing must be closed.

The standards contained in this chapter are to be considered minimum standards for railroad/highway crossing projects. They may be inadequate if extraordinarily hazardous conditions exist. In these cases, higher levels of protection should be provided.

32.2 Selection of Appropriate Warning Devices

References: *Manual on Uniform Traffic Control Devices*
WSDOT Design Manual
FHWA Railroad-Highway Grade Crossing Handbook

- .21 Passive Protection.** These devices include signing and pavement markings. The crossbuck sign is the responsibility of the railroad. All other signs and pavement markings are the responsibility of the local agency and are eligible for Section 646 funding.
- .22 Design Standards for Active Protection.** Active grade crossing traffic control devices include all signals, bells, and gates or other devices or methods that inform motorists

and pedestrians of the approach or presence of trains, locomotives, or railroad cars on grade intersections. The majority of the devices are automatically activated by the train. Active protection may be appropriate for those locations which have an exposure factor (trains per day times vehicle ADT) greater than 1,500 or are located on railroad main lines. However, a site specific evaluation of train and vehicle traffic volumes and speeds, rural or urban location, potential danger to a large number of people, sight distance and accident history should be completed before making a decision. The basic active protection device consists of post-mounted flashing lights. Gates should be added when any one of the conditions listed in Appendix 32.53 are in existence. Additional cantilevered flashing lights should be provided if any one of the conditions listed in Appendix 32.53 apply. Unless special circumstances exist, all cantilevered installations should include gates. Signal lenses shall be 30 centimeters (12 inches) in diameter. The design standards are illustrated in Appendixes 32.51 and 32.52 and are in addition to those found in the *Manual on Uniform Traffic Control Devices* (MUTCD). MUTCD design standards also apply.

- a. **Post-Mounted Signals.** These flashing light signals are normally placed to the right of approaching highway traffic on all roadway approaches to a crossing. The design standards included as appendices to this division show the minimum dimensions for the following cases:

Appendix 32.51 — Shoulder Section
 Appendix 32.52 — Curb Section

- b. **Automatic Gates.** Automatic gates should be added to post-mounted signals when any one of the following conditions is present:
 - Multiple main line railroad tracks.
 - Multiple tracks at or in the vicinity of the crossing which may be occupied by a train or locomotive so as to obscure the visibility of another train approaching the crossing.
 - High-speed train operation combined with limited sight distance at either single or multiple track crossings (see Appendix 32.53).
 - A combination of high speeds and moderately high volumes of highway and railroad traffic.
 - Either a high volume of vehicular traffic, high number of train movements, school buses, or trucks carrying hazardous materials, unusually restricted sight distance, continuing accident occurrences, or any combination of these conditions.

When utilizing gates, the departure side of the crossing is always left open to allow highway traffic to escape from the crossing.

- c. **Cantilevered Signals.** Cantilevered flashing light signals should be added to post-mounted signals and gates when any one of the following conditions is present:
- There are considerable distractions near or beyond the crossing which would compete for the driver's attention.
 - Traffic or parking conditions are such that the view of a post-mounted flashing light signal could be blocked.
 - The angle of approach to the crossing is acute and post-mounted signals could go undetected.
 - The highway has two or more lanes in each direction.
 - The highway carries high-speed and high-volume traffic.

Unless special circumstances exist, all cantilevered installations should include gates. The design standards included as appendices to this division show the minimum dimensions for the following cases:

Appendix 32.51 — Shoulder Section
Appendix 32.52 — Curb Section

All crossing sites will be reviewed and recommendations made by a diagnostic team consisting of representatives of the Federal Highway Administration (FHWA), railroad, WUTC, local agency, and the Washington State Department of Transportation (WSDOT) Headquarters Highways and Local Programs and Region Local Programs Engineer.

- d. **Traffic Signals at or Near Grade Crossings.** When highway intersection traffic control signals are within 61 m (200 feet) of a grade crossing, control of the traffic flow should be designed to provide the vehicle operators using the crossing a measure of safety at least equal to that which existed prior to the installation of such signal. Accordingly, design, installation, and operation should be based upon a total systems approach in order that all relevant features may be considered (see MUTCD Section 8C-6).
- .23 Traffic Barriers.** A railroad signal may be a point hazard warranting the use of a traffic barrier or crash cushion. Traffic barrier and crash cushion guidelines are shown in Section 710 of the WSDOT *Design Manual*. A guardrail should be installed if the speed limit is greater than 60 kph (35 mph).
- .24 Approaches.** Funding to improve road approaches for safety purposes may be considered as a part of signalization projects on a case-by-case basis. Approach work for safety

improvement includes profile corrections to reduce approach grades at main line locations.

- .25 Crossing Surfaces.** Funding to improve crossing surfaces may be considered as a part of signalization projects on a case-by-case basis. The street or highway must have an ADT of at least 7,500 in order to be considered. Funding will be provided at 100 percent federal.
- .26 Illumination.** Railroad grade crossings may be considered for illumination where a nighttime accident pattern is known to exist or is likely to occur. These projects will be considered on a case-by-case basis. Funding will be provided at 100 percent federal.
- .27 Design Deviations.** Deviations will be considered upon receipt by the Assistant Secretary for Highways and Local Programs of a written request accompanied by the following documentation:
- A fully-dimensioned (25 mm = 15 m (1" = 50') minimum) plan of the site, including topographic features, all right-of-way lines, location of rails, easements, structures, curbs or shoulders, pavement lines, and proposed signal locations.
 - Cross-section at each signal location, with all relevant dimensions and features.
 - Photographs of the site.
 - A statement outlining why this deviation is justified.

32.3 Project Development Process

- .31 Project Application Package.** A local agency wishing to develop a project to provide protection at a railroad/highway crossing must submit to the Region Local Programs Engineer an original and two copies of the completed Project Prospectus, along with the initial Local Agency Agreement and items of supporting data listed in the Project Application Checklist (see Chapter 21).

The railroad should be contacted during the project development process to provide notification of the proposed project and to obtain relevant data on train movements. Nearly all rail trackage in Washington State is operated by the Union Pacific or Burlington Northern Santa Fe. The contact person for these railroads are listed below:

Mr. John Trumbull, Manager
Industry and Public Projects
Union Pacific Railroad Company
5424 SE McLoughlin Boulevard
Portland, OR 97202
(503) 872-1809

Mr. Mike Cowles
Manager Public Projects
Burlington Northern Santa Fe Railway Co.
2454 Occidental Avenue South, Suite 1-A
Seattle, WA 98104-1105
(206) 625-6146

The Region Local Programs Engineer will assist in determining the owner of the trackage and the appropriate contact person if necessary. In completing the Project Application Package, sufficient preliminary engineering funds should be requested to cover the agency's PE costs as well as an additional \$3,000 to \$5,000 to cover the railroad's costs. The additional dollars for PE work done by the railroad should be shown under "other" on the Local Agency Agreement.

If existing devices are to be removed, the agency will notify the Highways and Local Programs Operations Engineer who will determine the salvage rights and values, and determine the railroad's credit to the FHWA, if they are federal property.

.32 Preparation of Project Data. When preliminary engineering funding has been approved, the agency should submit the necessary project data to the railroad along with a notice to proceed. Appendix 32.54 shows a Railroad Project Data Form which provides a railroad with data to prepare an estimate of cost. The data required by the railroad is traffic lane widths, shoulder widths, curbs and sidewalks, angle at which the highway crosses the tracks, and the legal description of the crossing location. The location of any underground and overhead utilities in the area which will be excavated for the signal foundation should also be included.

.33 Railroad Agreement and Petition. Upon completion of the signal layout and design, the railroad will prepare the standard agreement shown in Appendix 32.57 and a petition to the Washington State Utilities and Transportation Commission for installation of the crossing protection as required by RCW 81.53.261. At this time, the railroad will also request construction authorization and the local agency should proceed with the construction authorization process as per 32.34. The drawing shall form part of the agreement.

Preliminary engineering and construction funding may be registered simultaneously if no right-of-way is required.

The petition and the agreement will be forwarded to the local agency for execution and returned to the railroad. The railroad will file the petition with the WUTC. The WUTC will review the petition and, if appropriate, issue an order directing installation of the crossing protection.

.34 Construction Authorization. The local agency should prepare and submit the following to the Region Local Programs Engineer with the request for construction funding:

- a. Right-of-Way certification (if not previously submitted).
- b. Supplement to the Local Agency Agreement.
- c. Railroad agreement.

The Railroad Highway Safety Crossing Program is funded at 100 percent federal funds, with no local match required.

WSDOT will review the PS&E package and request funding authorization from FHWA. The agency will be notified when construction funds are approved and the supplement to the Local Agency Agreement returned. The agency should request a contract number from the Region Local Programs Engineer and notify the railroad to proceed with construction.

.35 Construction Administration and Project Closure.

Upon receipt of construction authorization, the railroad will order material and proceed with construction. Approximately five to eight months are required to obtain the signal material. The railroad will attempt to coordinate construction with other projects in the area to more effectively utilize crews.

The local agency is responsible for all work associated with a railroad agreement, from date of authorization for the railroad to proceed with the work through final completion of the work, subsequent closing of the agreement, and completion of the final audit.

The WSDOT Highways and Local Programs Operations Engineer will notify the Region Local Programs Engineer of the construction schedule received from the Railroad. The Region Local Programs Engineer in turn will notify the agency that will oversee the construction of railroad work and request that they contact the railroad's project representative to confirm the construction schedule and to maintain a line of communication at the project level.

The local agency is required to document the work performed by the railroad to ensure that the railroad's billing can be verified, thereby leaving an audit trail. This documentation may be performed by random oversight which is defined as on-site reviews two or three times a week while the railroad is working.

The documentation should be a record in the form of a diary and supplemental reports of the work performed by the railroad. This record shall be sufficiently complete to establish a record of the following:

- Number and general type of labor and supervision and number of hours chargeable to the agreement work.
- Number and type of major items of equipment used and number of hours chargeable to the agreement work.
- Description of work accomplished.
- Major items of material installed.
- Major items of material removed and disposition, i.e., salvage, scrap, junk.
- Details concerning any changes or extra work or other conditions affecting the work.

Within 30 days of project completion, the railroad will by letter notify the local agency that construction is completed. The local agency requests final billing from the railroad.

The local agency and the WUTC will be notified when the signals are completed and in operation. The agency should notify the Region Local Programs Engineer when the project is completed and submit any railroad and agency billings.

WSDOT will perform the final inspection and send a 90-day closure letter to the local agency (see Chapter 53).

32.4 Other Projects With Railroad Involvement

- .41 General Discussion.** If a highway project contains a railroad crossing within construction limits, the local agency must notify the railroad company involved in the event that a permit of an agreement will be necessary. Early contact with the railroad will minimize delays to the project.
- .42 Procedure for Securing Railroad Agreements.** The standard agreement shown in Appendix 32.57 shall be used. The procedure for executing the agreement varies slightly, depending on project circumstances:
- Local agencies shall submit to the Region Local Programs Engineer two copies of the executed agreement reflecting the detailed project cost estimate.
 - When the affected railroad right-of-way is owned by more than one railroad company, the local agency shall execute an agreement with each company for each crossing within the project boundaries.

- When more than one railroad company uses the affected railroad right-of-way owned by one company, the local agency shall execute the agreement with the owning company which acts on behalf of the other companies. The other railroad must be identified by name in the agreement.
- On projects where the construction contract will be administered by WSDOT, in addition to the above agreement, a three-party agreement (state, railroad, local agency) in letter form must be submitted with the plans, specifications, and estimates (PS&E). This agreement must explain that the state can make payments directly to the railroad. The three-party agreement will first be executed by the local agency and railroad, and then by the state after its review. A sample letter-type agreement is shown in Appendix 32.56.

32.5 Appendixes

- 32.51 Signal Design — Shoulder Section (Metric/English)
- 32.52 Signal Design — Curb Section (Metric/English)
- 32.53 Railroad/Highway Grade Crossing Protection Sight Distance Diagram and Gate Warrant Form (Metric/English)
- 32.54 Railroad Project Data Form
- 32.55 Washington State Short Line Contact List
- 32.56 Sample Letter — Type 3 Party Agreement
- 32.57 Local Agency Railway Agreement

Introduction

The City Design Standards Committee and the County Design Standards Committee, in accordance with RCWs 35.78.030 and 43.32.020, met to review and update the City and County Design Standards that were adopted in 1994 and that had been published in both English and metric units.

The revisions included in this document are: (1) the separate English units and metric units document that were previously published have been combined in this dual units document, (2) additional guidance references have been included for the Americans with Disabilities Act (ADA), and (3) resource information references (not design standards or guidance) are included for roundabouts and traffic calming.

National standards to utilize for roundabouts have not yet been developed. The committee will consider these after they have been developed. Traffic calming tools are generally applicable to local access streets and roads; however, some of these tools are being used on arterials, primarily low volume collectors. The resource listed identifies traffic calming tools.

These standards apply to new construction and reconstruction projects, 2-R and 3-R projects, and low volume road and street projects on routes with federal functional classifications as Principal Arterials, Minor Arterials, and Collectors.

The Local Agency Engineer may approve use of minimum AASHTO and related standards as contained in the references. Construction utilizing lesser standards than these must have the approval of the Washington State Department of Transportation (WSDOT) Operations Engineer, for Highways and Local Programs in accordance with RCW 35.78.040 or RCW 36.86.080 as appropriate.

In adopting these standards, the committees seek to encourage standardization of road design elements where necessary for consistency and to assure that motoring, bicycling, and pedestrian public safety needs are met. Considerations include safety, convenience, pleasant appearance, proper drainage, and economical maintenance. The committees recognize that cities and counties must have the flexibility to carry out the general duty to provide streets, roads, and highways for the diverse and changing needs of the traveling public.

These standards cannot provide for all situations. They are intended to assist, but not to substitute for, competent work by design professionals. It is expected that land surveyors, engineers, and architects will bring to each project the best skills from their respective disciplines. These standards are also not intended to limit any innovative or creative effort which could result in better quality, better cost savings, or both. An agency may adopt higher standards to fit local conditions. Special funding programs may also have varying standards.

The decision to use a particular road design element at a particular location should be made on the basis of an engineering analysis of the location. Thus, while this document provides design standards, it is not a substitute for engineering judgment.

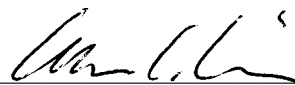
Engineers should take into account all available information, including available funding, and use the professional judgment that comes from training and experience to make the final design determination. There should be some record, not necessarily formal or cumbersome, of the matters considered during the design process that justify decisions made regarding the final project design.

- I The 2001 AASHTO publication, “A Policy on Geometric Design of Highways and Streets” is referenced by page number, table, or figure number for design elements of the urban and rural highway. For those design elements not specifically identified, such as crown, superelevation, design speed, number of lanes, pavement design, intersection design, vertical clearance over walkway areas, etc., designers should refer to AASHTO.

Committee Membership

City Design Standards Committee RCW 35.78.020	County Design Standards Committee RCW 43.32.010	Other Participants
<p> Lynn Price, PE Project Manager City of Bremerton lprice@ci.bremerton.wa.us</p> <p> Ken Brown, PE Design Engineer City of Spokane kbrown@spokanecity.org</p> <p> Mike Johnson, PE City of Seattle mike.johnson@ci.seattle.wa.us</p> <p> K. Wendell Adams, PE City Engineer City of Yakima kadams@ci.yakima.wa.us</p> <p> Jim Nichols, PE City of Chehalis Public Works Director Chehalispw@localaccess.com</p> <p> Pat O'Neill, PE City Engineer City of University Place poneill@ci.university-place.wa.us</p>	<p> Jim Whitbread, PE County Engineer Stevens County jwhitbre@co.stevens.wa.us</p> <p> Ken Stone, PE County Engineer Cowlitz County stonek@co.cowlitz.wa.us</p> <p> Dale Rancour, PE County Engineer Thurston County rancoud@co.thurston.wa.us</p> <p> Bob Turpin, PE County Engineer Jefferson County bturpin@co.jefferson.wa.us</p> <p> Jolene Gosselin, PE County Engineer Douglas County llindsay@co.douglas.wa.us</p> <p> Paul Bennett, PE County Public Works Director/Engineer Kittitas County paulb@co.kittitas.wa.us</p>	<p> Al King, PE, Committee Chair Operations Engineer Highways and Local Programs Service Center WSDOT kinga@wsdot.wa.gov</p> <p> Jim Seitz Association of Washington Cities jims@awcnet.org</p> <p> Randy Hart, PE County Road Administration Board randy@crab.wa.gov</p> <p> Bob Moorhead, PE Assistant Director for Operations Transportation Improvement Board robertm@tib.wa.gov</p> <p> Dave Olson, WSDOT Design OlsonDa@WSDOT@wa.gov</p> <p> Gary Hughes, PE Federal Highway Administration Gary.Hughes@FHWA.dot.gov</p> <p> Jeff Weber, PE Consulting Engineers Concil of Washington JeffW@TheTranspoGroup.com</p>

These design standards were developed with the approval and authorization of:



Alan O. King, PE
Committee Chair
Headquarters Highways and Local Programs

Design Standards for New Construction and Reconstruction

Definitions

Clear Zone. The clear zone is the roadside border area starting at the edge of the traveled lane that is available for safe use by errant vehicles. The available clear zone is the distance, measured in feet (meters), normal to the highway beginning at the edge of the traveled lane to the closest part of any fixed object or nontraversable obstacles. Establishment of a minimum width clear zone is recommended. Rigid objects and certain other obstacles within the zone should be removed, relocated to an inaccessible position outside the minimum clear zone, remodeled to make traversable, breakaway, or shielded. Traffic control signs and luminaires with breakaway supports are not considered obstacles. All new construction and reconstruction projects should consider a minimum clear zone distance.

Functional Classification. The roadway classifications referred to in this manual are the Federal Functional Classifications shown on the official functional class maps prepared by the Headquarters Planning and Programming Office of WSDOT. |

New Construction. New construction is the building of a new roadway or structure on substantially new alignment, or the upgrading of an existing roadway or structure by the addition of one or more continuous traffic lanes.

Reconstruction. A reconstruction project involves major construction activity in excess of 3-R activity (see the Design Standards for 3-R Projects section). Reconstruction includes significant changes in cross section and/or shifts in vertical or horizontal alignment. If 50 percent or more of the project length involves significant vertical or horizontal alignment changes, the project will be considered reconstruction. Reconstruction may require acquisition of additional right-of-way, and may include all items or work usually associated with new construction. Reconstruction adds additional capacity for the through traffic lanes.

Traveled Lane. That portion of the roadway used for vehicle movement exclusive of the portion of the roadway width used or available for parking vehicles.

Average Daily Traffic (ADT). The general unit of measure for traffic defined as the total volume during a given time period (in whole days), greater than one day and less than one year, divided by the number of days in that time period.

Design Hourly Volume (DHV). The DHV is generally the 30th highest hourly volume (30 DHV) of the future year chosen for design. On the average rural road or arterial, DHV is about 15 percent of ADT. For urban areas, DHV is usually between 8 to 12 percent of the ADT.

3-R. Resurfacing, restoration, and rehabilitation of existing roadways with minimal changes to alignment or grade with no increase to capacity for the through traffic lanes.

2-R. Resurfacing and restoration of existing roadways by supplementing the existing road prism.

Low Volume Roads and Streets. For this document, a collector arterial or lower classified road or street with an ADT of less than 400.

Roadway Geometrics

The following table provides some basic references to the designer. The designer should read the text associated with the referenced tables and should also consider other related tables and text in the AASHTO policy. Additional design references are in the References for New Construction and Reconstruction, 3-R, and 2-R Standards section.

Design Elements	References
	<u>2001 AASHTO Green Book</u> , “A Policy on Geometric Design of Highways and Streets.”
Stopping Sight Distance	Stopping Sight Distance (wet pavement) <u>Exhibit 3-1</u> , page <u>112</u> , and text on pages <u>425</u> (rural) and page <u>435</u> (urban).
Passing Sight Distance	Single vehicle passing a single vehicle (<u>Exhibit 3-7</u> , page <u>124</u>). Minimum passing sight distance single vehicle (<u>Exhibit 3-7</u> , page <u>124</u>).
<u>Roadway Approach/Departure Sight Distance</u>	<u>Exhibit 9-50 through 9-70</u> , pages <u>654-682</u> , “Intersection sight distance.”
Horizontal Curvature (Radius)	<u>Exhibit 3-14</u> , page <u>145</u> , “Minimum Radius for Design of Rural Highways, Urban Freeways, and High-Speed Urban Streets Using Limiting Values of e and f.”
Vertical Sag Curves	<u>Exhibit 3-78</u> , page <u>278</u> “Design Controls for Sag Vertical Curves - Open Road Conditions.” <u>Exhibit 3-79</u> , pages <u>280</u> , “Design Controls for Sag Vertical Curves.”
Vertical Crest Curves	<u>Exhibit 3-75</u> , page <u>273</u> , “Design Controls for Crest Vertical Curves – Open Road Conditions.” <u>Exhibit 3-76</u> , page <u>274</u> , “Design Controls for Stopping Sight Distance and for Crest Vertical Curves.” Vertical Curves Based on Passing Sight Distance.”
Vertical Grade	<u>Exhibit 6-4</u> , page <u>427</u> , “Maximum Grades for Rural Collectors.” <u>Exhibit 6-8</u> , pages <u>436</u> , “Maximum Grades for Urban Collectors.”

Bridge Criteria

Design Elements	References
Bridge Width	The minimum bridge width for two-way structures is the greater of: (1) the design roadway width, or (2) the existing roadway width.
Loading	HS 25-44 (for federally funded projects), others may use HS 20-44.
Vehicular Railing	AASHTO Crash Tested Rail, or Approved Crash Tested Rail.
Pedestrian Railing	AASHTO.
Approach Railing	AASHTO Crash Tested Rail, or Approved Crash Tested Rail.
Vertical Clearance	16.5 feet minimum.

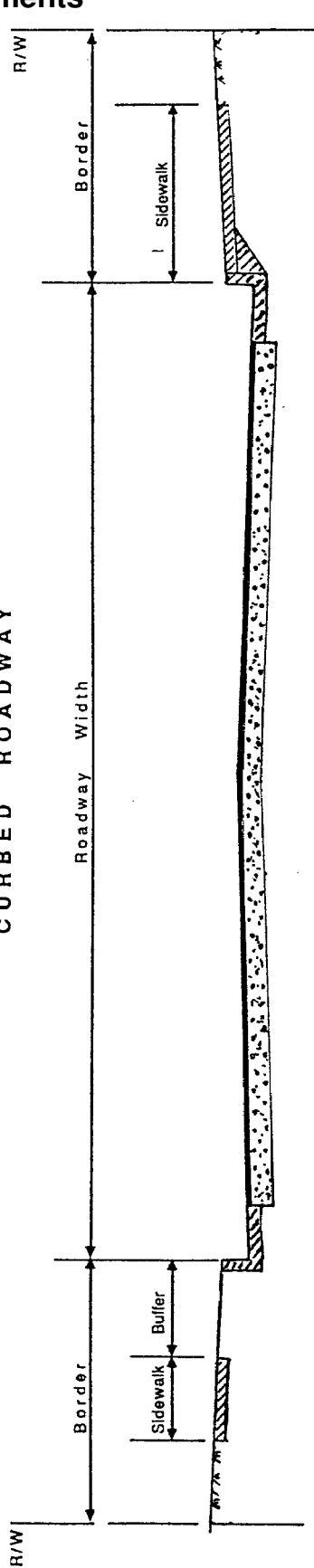
Other Criteria

Design Elements	References
Bicycle	Chapter 1020 of the WSDOT <i>Design Manual</i> (RCW 35.75.060 and 36.82.145).
Signing	MUTCD, as modified by the Washington State Transportation Commission per RCW 47.36.030.
Americans with Disabilities Act-1990 ADA	Code of Federal Regulations 28 CFR Part 36, Interim Final Rules U.S. Department of Justice The Architectural and Transportation Barriers Compliance Board WSDOT/APWA Standard Plan F-3 1994 Uniform Building Code, Washington State Amendments.
Sidewalks	Sidewalk Details, A Guide for Washington Local Agencies, Tribes and Nations, March 2001.

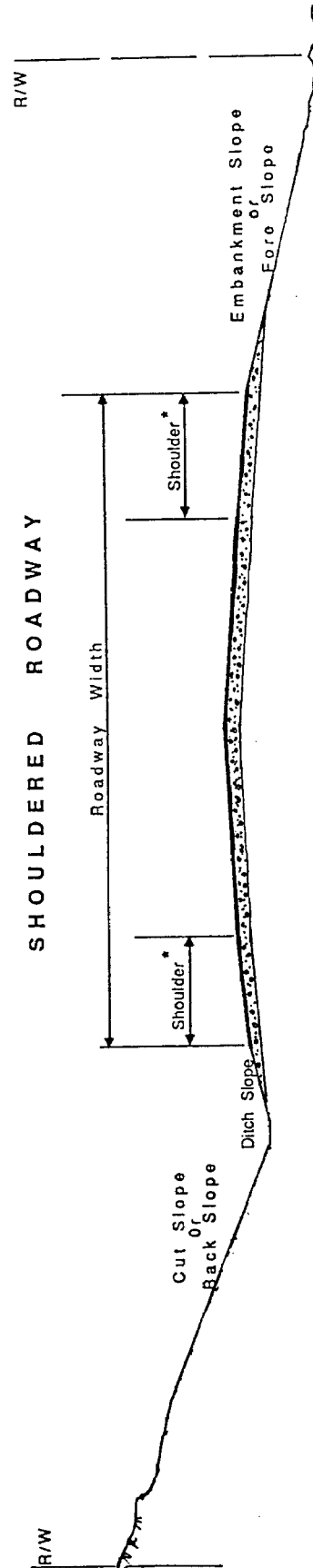
Roadway Elements

DEFINITION OF ROADWAY ELEMENTS

CURBED ROADWAY



SHOULDERED ROADWAY



* Does not include widening for guard rail or other special purposes.

Geometric Cross-Section for Two-Way Roads and Streets (English Units)

Minimum Design Standards	Arterial											
	Principal ^(h)			Minor ^(h)				Collector ^(h)				
	Curbed ^(d)	Shouldered		Curbed ^(d)	Shouldered			Curbed ^(d)	Shouldered			
	DHV All	DHV Below 200	DHV 200 and Over	DHV All	DHV Below 100	DHV 100 to 200	DHV 201 and Over	DHV 400 and Over	ADT 400 to 750	ADT 751 to 1000	DHV 100 to 200	DHV 201 and Over
Right-of-Way	Not less than required for all design elements.											
Roadway Width ^{(a)(b)(g)(i)}	24 ft	36 ft	40 ft	24 ft	32 ft	36 ft	40 ft	24 ft	26 ft	28 ft	34 ft	40 ft
Lane Width: (A) Exterior ^{(b)(i)}	12 ft	12 ft	12 ft	12 ft	12 ft	12 ft	12 ft	12 ft	10 ft	10 ft	11 ft	12 ft
(B) Interior Thru ^(b)	11 ft	11 ft	11 ft	11 ft	11 ft	11 ft	11 ft	11 ft	10 ft	10 ft	11 ft	11 ft
(C) 2-Way Left Turn ^(b)	11 ft	11 ft	11 ft	11 ft	11 ft	11 ft	11 ft	11 ft	10 ft	10 ft	11 ft	11 ft
(D) Exclusive Turn ^(b)	11 ft	11 ft	11 ft	11 ft	11 ft	11 ft	11 ft	11 ft	10 ft	10 ft	11 ft	11 ft
(E) Parking	10 ft ^(c)			10 ft ^(c)					(e)			
Shoulder Width ^{(f)(g)(i)}		6 ft	8 ft		4 ft	6 ft	8 ft		3 ft	4 ft	6 ft	8 ft
Clear Zone/Side Slopes	AASHTO											
Ditch Slope (in slope)	Slopes steeper than 4:1 should only be used when achieving a 4:1 slope is impractical.											

(a)For curbed, distance from face of curb to face of curb. For shouldered, distance from outside edge to outside edge of shoulder.

(b)May be reduced to minimum allowed by AASHTO.

(c)8 feet may be acceptable when the lane is not likely to become a traffic lane in the foreseeable future.

(d)Curbed section is appropriate for urban setting.

(e)Industrial areas 8 feet to 10 feet. Residential areas 7 feet to 10 feet.

(f)When guardrail is necessary, provide 2 feet of widening or longer posts to ensure lateral support.

(g)For roads with traffic volumes of less than 400 ADT, the low volume road and street standards may be used.

(h)Federal functional classification defined by WSDOT (Planning and Programming Service Center).

(i)For guidance for one-way streets, see AASHTO, and the 1991 uniform fire code.

Note: Where adequate traffic data is not available to determine DHV, a conversion may be made as follows:

DHV = (.08 to .12) x ADT to change ADT to DHV

New Sidewalks (when provided)	<ul style="list-style-type: none"> • Minimum Width — 60 inches continuous clear width or 36 inches clear width with 60 inch by 60 inch clear passing spaces at 200-foot minimum intervals. • Surface — Firm, stable, and slip resistant. • Crosslopes — 1:50 (2%) maximum. • Running Slope — Minimum feasible slope consistent with slopes established by the adjacent roadway. • Buffer — Separation from vehicular ways by curbs or other barriers. <p>Note: For temporary work or alterations to existing sidewalks or pedestrian facilities, refer to ADA rules. For pedestrian paths off public rights-of-ways, the designer should refer to uniform building codes and WAC 51-30 for the appropriate standards.</p>
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Design Standards for 3-R Projects

Definitions

Resurfacing. The addition of a layer or layers of paving material to provide additional structural integrity or improved serviceability and rideability.

Restoration. Work performed on pavement or bridge decks to render them suitable for an additional stage of construction. This may include supplementing the existing roadway by increasing surfacing and paving courses to provide structural capability, widening up to 10 feet (3 m), including lane and shoulder width, and should include the installation of localized safety improvements. Restoration will generally be performed within the existing right-of-way.

Rehabilitation. Similar to “Restoration” except the work may include, but is not limited to, the following:

- Reworking, strengthening, or removing and replacing the base and/or subgrade.
- Recycling or reworking existing materials to improve their structural integrity.
- Adding underdrains.
- Replacing or restoring malfunctioning joints.
- Substantial pavement under-sealing when essential for stabilization.
- Pavement grinding to restore smoothness, providing adequate structural thickness remains.
- Removing and replacing deteriorated materials.
- Crack and joint sealing but only when the required shape factor is established by routing or sawing.
- Improving or widening shoulders.

Rehabilitation may require acquisitions of additional right-of-way.

Safety Improvements. Some safety improvements are normally included in 3R projects. During project development, a generalized roadside evaluation should be prepared to identify those high priority roadside elements to be considered for mitigation. Safety improvements include:

- Upgrading existing substandard roadway design elements — roadway design elements are the physical characteristics of the roadway such as alignment, grades, widths, sight distance, clearances, bridges, and the pavement structure including surface texture.
- Improving existing operational features — operational features include traffic control devices, left and right turn lanes, lighting, bicycle, and pedestrian accommodations that provide for the safe and efficient movement of vehicles, bicycles, and pedestrians.
- Reducing the potential hazard of existing roadside features — roadside features include sideslopes, ditches, drainage facilities, barrier systems, sign supports, luminaries, trees, utility poles, and other features adjacent to the roadway.

- Upgrading bridge safety features to include protection at all bridge ends by use of — bridge rails, approach rails, connections, and terminals are considered bridge safety features.
- Upgrading substandard superelevation.

General Discussion

Funding restrictions and other considerations do not always allow improvement of all existing roads and streets to the standards desirable for new construction. Therefore, when pavement condition deteriorates to the level of minimal standards, a cost-effective pavement improvement is needed.

A project becomes 3-R when the proposed improvement consists of resurfacing, restoration, or rehabilitation to preserve and extend the service life of the roadway, or enhances the safety of the traveling, bicycling, and/or walking public.

3-R projects primarily involve work on an existing roadway surface and/or subsurface. Their purpose includes extending the service life, providing additional pavement strength, restoring or improving the original cross-section, increasing skid resistance, decreasing noise, improving the ride of the roadway, and enhancing safety.

Many factors influence the scope of 3-R projects, including:

- Roadside conditions.
- Funding constraints.
- Environmental concerns.
- Changing traffic and land use patterns.
- Deterioration rate of surfacing.
- Accidents or accident rates.

Normally, all 3-R improvements are made within the existing right-of-way, although acquiring right-of-way and/or easements should be considered when and where practical.

Each 3-R project should be considered in context with the entire route between logical termini and within the constraints imposed by limited funding and other considerations.

As a minimum, normally include the following for a 3-R project:

- Guardrail end treatments upgraded to current standards.
- Appropriate transition and connection of approach rail to bridge rail.
- Beveled end sections for both parallel and cross-drain structures located in the clear zone.
- Relocating, protecting, or providing breakaway features for sign supports and luminaries.
- Protection for exposed bridge piers and all abutments.
- Modification of raised drop inlets which present a hazard in the clear zone.

It is desirable to provide a roadside clear of fixed objects and nontraversable obstacles. The priority for action relative to roadside obstacles is: (1) eliminate, (2) modify, and (3) protect.

On all projects which include structures with deficient safety features, consideration must be given to correcting the deficient features. When complete upgrading is not practical, a partial or selective upgrading and/or other improvements should be considered to mitigate the effects of the substandard elements.

Design Standards for 2-R Projects

General

Funding restrictions do not always allow improvement of existing roadways to the standards desired. Therefore, when pavement condition reaches a minimal condition, cost effective pavement improvements are needed.

Resurfacing and restoration (2-R) projects involve work to restore the existing roadway surface and appurtenances for safe and efficient highway operation. This type of project provides for resurfacing of the existing roadway to provide structural adequacy, to restore the roadway surface condition, and to consider making minor safety improvements.

Major improvements are not the intent of this type of project. In addition to 2-R allowing for maintenance overlays for preservation of the roadway, a 2-R project is defined as:

Resurfacing. The addition or replacement of a layer of paving material to provide additional structural integrity or improve serviceability and rideability.

Restoration. Work performed on either pavement sections or bridge decks to render them suitable for an additional stage of construction. This may include supplementing the existing roadway by increasing surfacing and paving courses to provide structural capability and minor shoulder widening to provide roadway section continuity. Restoration will generally be performed within the existing right-of-way.

Design Parameters

1. **Traveled Way and Roadway Width.** Resurfacing of the roadway will normally be to the existing width. This should consider paving of previously unpaved shoulders. If short lengths of narrower lanes or shoulders exist within the project limits, widening should be considered to provide roadway section continuity within the project limits.

2. **Pavement**

- a. The existing pavement may be structurally adequate, but may require an overlay to correct other types of deficiencies. An 0.7 inch (18 mm) minimum depth of paving material should be used to correct deficiencies such as rutting, skid resistance, etc.

If a general structural deficiency exists, the design service life minimum of eight years shall be used to determine the solution. A minimum depth of 1.2 inches (30 mm) is required for any structural deficiency in the surface.

- b. To the extent feasible, achieve standard superelevation by adjusting surfacing depth.

3. **Safety Improvement.** Some safety improvements are normally considered in 2-R projects. During project development, a generalized roadside evaluation should be prepared to identify those high priority roadside elements to be considered for mitigation.

All high accident locations should be evaluated for treatment.

All signing and pavement markings shall be updated in compliance with the MUTCD.

The items below, in conjunction with the accident history and funding availability, should be considered in developing the project:

- Evaluate Bridge approach guardrail — The transition and attachment to all the bridge ends should be brought up to current standards. The leading or trailing guardrail ends should be upgraded if there is no existing approach guardrail, new approach guardrail should be installed on all bridge ends to the current standards. Evaluate bridge barrier systems. Consideration should be given to upgrades.
- Rail/Deck/Post Elements
- Approach Transitions
- Wood Elements (should be particularly considered for upgrades.)
- Remove unneeded guardrail.
- Upgrade all guardrail ends. The preferred upgrade would be to the current standards.
- Relocate, protect , or provide breakaway features for sign supports and luminaries inside the clear zone.
- Adjust utilities for location with clear zone standards.
- Add or update traffic barriers/guardrail.
- Beveling or extend culverts.
- Slope flattening/ditch.
- Add channelization and/or illumination.
- Improve sight distance.

References for New Construction and Reconstruction, 3-R, and 2-R Standards

The designer may use the standards and rationales incorporated into the following manuals (see the following page for addresses to acquire reference materials).

AASHTO

- A Policy on Geometric Design of Highways and Streets, 2001 Edition.
- Guide for Design of Pavement Structures
- Highway Drainage Guidelines
- Guide for Roadway Lighting
- Roadside Design Guide

Transportation Research Board (TRB)

- Highway Capacity Manual

Washington State Department of Transportation (WSDOT)

- Standard Specifications for Road, Bridge, and Municipal Construction
- Supplement to MUTCD (WAC 468-95)
- Bridge Design Manual
- Highway Hydraulics Manual
- Standard Plans for Road, Bridge, and Municipal Construction
- Design Manual (except for 2R/3R)
- Pavement Design Manual
- A Guide for Local Agency Sidewalk Details, WSDOT Headquarters Highways and Local Programs, Washington State Technology Transfer Center

Institute of Transportation Engineers (ITE)

- Traffic Engineering Handbook

FHWA

- Manual of Uniform Traffic Control Devices (MUTCD)

ADA

- Federal/Register, June 20, 1994, Interim Final Rules, 36 CFR-Part 1191 Architectural and Transportation Barriers Compliance Board
- 1994 Uniform Building Code, Washington State Amendments

Roundabouts

- NCHRP Synthesis 264 — Modern Roundabout Practice in the United States, Transportation Research Board
- FHWA — Roundabouts, An Informational Guide
- WSDOT *Design Manual*, Chapter 915

Traffic Calming

- A Guidebook for Residential Traffic Management, Final Report, December 1994, WSDOT Highways and Local Programs Service Center, Washington State Technology Transfer Center

Addresses to Acquire Reference Materials

<i>AASHTO</i>	American Association of State Highways and Transportation Officials 444 North Capitol Street NW, Suite 249 Washington, DC 20001 (202) 624-5800 (202) 624-5806 (fax)
<i>TRB</i>	Transportation Research Board National Research Council 2101 Constitution Avenue NW Washington, DC 20418
<i>WSDOT</i>	Engineering Publications Department of Transportation Transportation Building, Room SD3 Olympia, WA 98504-7400 (206) 705-7430 (206) 705-6808 (fax)
<i>ITE</i>	Institute of Transportation Engineers 525 School Street SW, Suite 410 Washington, DC 20024 (202) 554-8050 (202) 863-5486 (fax)
<i>MUTCD</i>	Superintendent of Documents U.S. Government Printing Office Washington, DC 20402
<i>ADA</i>	Office of the General Counsel Architectural and Transportation Barriers Compliance Board 1331 F Street NW, Suite 1000 Washington, DC 20004-1111 (202) 272-5434 (Voice), 272-5449 (TDD) (202) 272-5447 (fax)

Design Standards for Low Volume Roads and Streets

Note: This section is adapted from the report, “Guidelines for Low Volume Roads and Streets Within Washington State,” developed by the Washington State Association of County Engineers/Public Works Directors.

There is universal agreement among highway, road, and street design professionals at all levels of government on the geometric standards to be applied when constructing or reconstructing high volume (ADT 1000) highway, road or street facilities. There also appears to be at least general agreement on standards and guidelines on facilities with traffic volumes as low as 400 ADT. There is less consensus, however, when it comes to facilities in the low volume category where the ADT is less than 400. It is estimated that well over half the state’s 52,800 miles (85,000 kilometers) of county roads and city streets under the jurisdiction of licensed professional county and city engineers falls in the low volume category. These standards are in response to the need for design guidelines, procedures, and considerations specifically geared to these low volume roads and streets. The types of improvements to which the guidelines apply may be either publicly or privately funded, and either a new construction or reconstruction project.

It should be understood that these standards are directed at substantive improvements, not at so called “spot improvements” that affect only a small portion of a facility, such as an isolated curve or a minor intersection. Spot improvements on a geometrically substandard facility should be evaluated on an individual basis and be designed to blend in with the remaining adjacent features whenever a more extensive improvement cannot be justified.

These standards do not replace any of the previous standards in this document but rather serve as a supplement specifically regarding low volume facilities. The intent of these standards is identical to that of the AASHTO policy, which is “... to provide guidance to the designer by referencing a recommended range of values for critical dimensions. Sufficient flexibility is permitted to encourage independent designs tailored to particular situations.” Licensed professional county and city engineers have the necessary background and experience to do such tailoring.

It should be recognized that low volume roads and streets usually serve different functions than freeways and arterials; the demands on them are not the same. To equate them with freeways and arterials would likely lead to overdesign and make them far more costly than need be. Accidents on low volume facilities are relatively rare events. National statistics indicate that on the average road carrying 50 vehicles per day, there is only one accident per year for every 2.7 miles (4.3 km)¹. Since accident records show that higher standards do not significantly reduce non-intersection accidents², it would not be cost effective to adopt high standards with this expectation.

The decision as to the appropriate design will be based in part on the facility’s functional classification. If it is a new facility in the arterial or collector class, every reasonable effort should be made to construct to at least minimum design standards.

If it falls into the local access class, there may be justification for a modified minimum or special design, referred to in the AASHTO Manual under the heading of “Special Purpose Roads.” Another excellent source of information regarding design standards for out-of-the-ordinary situations is the United States Forest Service (USFS) Road Preconstruction Handbook, which might be especially helpful for low volume and low speed situations in difficult terrain. When the proposed improvement is on an existing facility, a 3-R type project may turn out to be the only economically feasible solution.

Design Elements and Other Considerations in the Low Volume Road Design Process

Preface

In the following text, each of the major design elements is individually addressed as it relates to low volume road and street design. It should be noted that no single design element stands completely on its own, but that they are directly or indirectly related. The experienced designer will refer to this document and referenced publications in the process of taking a project from the programming to the construction stage.

Economic Analysis

While economic analysis is not in itself a design element, the concept is important when dealing with design of a low volume road and street. While it might be desirable from an engineering viewpoint to construct or reconstruct all improvements to full design standards, the reality is that there are not nearly enough funds available at the local level to do so. Federal fuel tax funds are available for construction on designated arterials only and must be matched with local funds. Most state fuel tax special program funds are similarly earmarked for construction on designated arterials with local matching funds required. No special program funds are available for routine maintenance activities.

The engineer must apply some sort of economic analysis to each project and determine how to strike the best balance among the desired design standards, the safety and mobility of the traveling public, and the available funds. The exact manner in which such an analysis is done is up to the professional judgment and experience of the engineer and should be appropriately documented.

Design Traffic Volume

Roads and streets should be designed for a specific traffic volume range, using either the current average daily traffic (ADT) or projected ADT for some future design year, preferably 20 years hence. Current and future land use trends should also be considered in making these decisions. On low volume facilities, traffic volumes do not normally change significantly for the foreseeable future. In an urban environment, these would typically be relatively short streets that are not likely to be extended. In rural areas, they most likely would be remote agricultural or natural resource access roads where there is little or no likelihood of land use change.

Design Speed

The geometric design features of a low volume facility should be consistent with the design speed appropriate for the facility. This may vary from a low of 20 mph (30 km/h) in mountainous terrain to a high of 65 mph (100 km/h) in flat terrain. It should be noted, however, that the design speed does not necessarily represent the anticipated operating or posted speed.

Sight Distance

The AASHTO Manual contains an exhaustive discussion of the factors and assumptions associated with the calculation of stopping, passing, and intersection sight distance. Stopping sight distance is a vital consideration for both urban and rural situations. Passing sight distance will likely be pertinent only in rural situations where operating speeds are in the 30 mph (50 km/h) and higher range. Intersection sight distance must be considered in light of the terrain in which the facility is located, and in urban situations, to what extent parking is permitted. Where the improvement contemplates some kind of pavement, the simplest approach is to base the design on stopping sight distance, and to control passing and intersection situations with appropriate striping.

Horizontal Alignment

On most low volume road and streets, especially those classified as local access where design speeds are in the 20 to 25 mph (30 to 40 km/h) range, short radius curves may be tolerated and the superelevation may not be necessary. On roads where design speeds may run as high as 65 mph (100 km/h), horizontal alignment becomes a most important consideration. Each individual road or street, however, is unique and must be carefully evaluated to ensure appropriate alignment. The computations involving curve radius and superelevation are important elements in the design process and are well detailed in the AASHTO Manual.

Vertical Alignment

For an urban, curbed, low volume street, the minimum acceptable grade to assure proper drainage is an important consideration. Tolerable maximum grades will vary with road use. A steeper grade may be acceptable on an urban residential street than on a rural road serving heavy trucks. Intersections on steep grades should be avoided whenever possible, especially in areas with recurring snow and ice problems. In urban areas, ease of access for emergency vehicles is also to be considered when establishing grades. For rural projects, AASHTO includes tables of maximum grades related to design speed and terrain. The design of a crest and sag vertical curves is related to design speed and is important in rural projects with higher design speeds. The AASHTO Manual is the best source for this process and for the integration of vertical and horizontal curvature.

Cross Section Elements

The AASHTO Manual and previous standards in this publication contain tables of recommended minimum roadway, pavement and shoulder widths for various design speeds and various levels of ADT, with the low end addressing all volumes below 400 ADT. It is recognized, however, that there are thousands of miles of both rural and urban roads and streets on which traffic volumes fall even below 150 ADT. In this category, there may be unique situations for which the engineer can justify and use somewhat lesser widths than those suggested by AASHTO. An example of such lesser widths is shown in the table below.

Typical Roadway Width (Feet)
Two-Lane Low Volume Roads and Streets
Based on Design Year ADT

Design Elements	ADT 150-400 All Design Speeds		ADT Below 150					
			Speeds Above 40		Speeds Below 40			
							Trucks Below 10%	
Functional Class	Coll.	Acc.	Coll.	Acc.	Coll.	Acc.	Coll.	Acc.
Roadway Width ⁽¹⁾	24 ft 7.2 m	24 ft 7.2 m	24 ft 7.2 m	22 ft 6.6 m	22 ft 6.6 m	20 ft 6 m	20 ft 6 m	18 ft ⁽²⁾ 5.4 m

⁽¹⁾Roadway width is the distance from outside of shoulder to outside of shoulder regardless of surface and shoulder type. An additional 8 feet (2.4 m) should be added for parking wherever it is to be permitted.

⁽²⁾The 1991 Uniform Fire Code requires an unobstructed width of 20 feet (6 m) for any road providing access to a building, subject to certain exceptions that may be approved by the local fire authority. WAC 51-24-10201 states that "Fire apparatus access road shall be provided and maintained in accordance with locally adopted Street, Road, and Access Standards."

Drainage

All roadways must have adequate crown or adequate cross-slope to get water off the roadway. Careful cross-slope design is especially important at the ends of horizontal curves with superelevation and at intersections. The size and shape of drainage ditches will depend on the amount of runoff and the type of soils in which the road is being built. It must also be recognized that the drainage ditch and headwalls are usually in the clear zone, or recovery area, which is an important roadway safety feature. When there are curbs and gutters, especially where grades are at or near recommended minimums, the location and design of inlets becomes most important.

Clear Zone

The designer must be aware of the extensive tables of recommended clear zone distances both in the AASHTO and LAG Manuals. It must also be recognized, however, that serious accidents on low volume roads, especially on those below 150 ADT, are rare occurrences. At this low end of the scale, the cost of providing the recommended clear zone may be prohibitive. Research⁴ undertaken to re-evaluate the safety needs on low volume rural roads states that the suggested values for side slopes and clear zones should be recognized as idealistic objectives and that a more realistic approach to roadside safety on low volume roads should depend on achieving a balance between the cost and the safety effectiveness of the design treatment.

It is further stated that, while the application of such an analysis to low volume roads indicates that individual roadside safety treatments yield very small safety contributions, some low cost improvements do appear to be cost effective,⁵ especially on the outside of curves. The removal of certain trees and relocation of utility poles are recommended. Also cited as being cost effective are the placement of guardrails on steep slopes, removal of unnecessary guardrails on flat slopes, and the flattening of steep but low embankments. In this regard, it is most important that the designer be aware not only of pertinent published recommendations, but also of research done subsequent to their adoption. In the final analysis, the designer must apply his or her own professional judgment in making the final design decisions and be prepared to defend and justify them if necessary.

Guardrail

If it has been established that a guardrail is justified on a particular improvement the designer must determine the best location, type of construction, and post-spacing that would be most appropriate for the function and anticipated traffic volume of the facility. The designer should be aware that warrants and designs developed for high volume, high speed facilities are not necessarily appropriate for low volume and/or low speed locations⁶.

Utilities

All utility structures and appurtenances that extend above the surface of the road right-of-way are a potential hazard to users of the facility and should be located near the edge of the right-of-way, especially in rural locations with higher speeds of travel. In an urban environment on curbed streets with lower speeds, the face of utility poles may be located to within 1.5 feet (0.5 m) of the curb face. When a project involves reconstructing an existing facility in a restricted corridor, where additional right-of-way is prohibitive or impossible to acquire and existing utility structures must be accommodated, a joint effort by the roadway and utility designers will be needed to assure that a safety-sensitive design has been achieved.

Railroad Crossings

The roadway width across a railroad should be the same as the roadway width on each side of the crossing. Appropriate grade crossing controls should be provided (including advance warning signs) commensurate with the design speed of the facility and the sight distance required. Maximum practicable sight distance at the crossing itself is desirable, especially on a mainline crossing where train speeds are high.

Miscellaneous Considerations

- Roadway approaches, public or private, should be designed to provide adequate sight distance in both directions on the facility being accessed, and should not interfere with drainage.
- ADA facilities are not normally associated with low volume roads and streets, except that in an urban development with sidewalks and curbs, the appropriate wheelchair ramps should be provided at intersections. The designer should be aware of the requirements of the Americans with Disabilities Act.
- Bicycle facilities would not normally be expected in a low volume environment, unless the facility is part of an adopted bicycle trail plan. It may then be desirable to provide a widened shoulder and appropriate drainage grates.
- Pedestrian facilities should be provided where significant numbers of children are walking to or from school, or where other pedestrian traffic warrants.
- Truck turning radii as detailed in the AASHTO Manual should be provided where significant volumes of heavy trucks are expected.
- Bus pullouts would not normally be part of a low volume project design, but certainly may be provided in case of special need.

References

- ¹“Guidelines for Guardrail on Low Volume Roads,” Virginia Transportation Research Council, 1990.
- ²1993 AASHTO Guide to Metric Conversion.

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44.1 General Discussion

After a project's location and design have been approved, work begins on the final version of its plans, specifications, and cost estimates (PS&E). These documents are used to award and administer a construction contract. The PS&E must be approved as defined in Chapter 13, *Becoming Certified to Administer FHWA Projects*, before the project can be advertised for construction.

PS&E approval is done by the local agency as identified in the Washington State Department of Transportation (WSDOT)/Local Agency Certification Acceptance (CA) Agreement. The approving authority identified on the CA Agreement must approve the plans and specifications, and a professional engineer licensed in the state of Washington must seal and date the plans and specifications.

The local agency should use the Project Development Checklist (Chapter 14, *Developing Projects Using Local Agency Guidelines*) to check for completeness of the contract plans prior to approving them.

The local agency should have a commitment file, when applicable, containing a summary of commitments made during project development. The file should be reviewed to ensure that the commitments are incorporated in the PS&E. These commitments typically involve right-of-way or environmental considerations (see Appendix 44.78 for list of possible required permits).

A copy of the bid documents should be furnished to Region Local Programs Engineers prior to advertisement for a check of completeness.

Any local agency project with work on state routes shall obtain PS&E approval from WSDOT.

On state ad-and-award projects, WSDOT will review and approve the PS&E prior to printing contract plans. An estimate of the cost of this service can be obtained from the Region Local Programs Engineer. Refer to forms for a checklist.

44.2 PS&E Requirements

.21 Wage Rates. For information on state law requirements, contact the Municipal Research and Services Center for a listing of current laws. State and federal wage rates must be included for all Federal Highway Administration (FHWA) projects advertised by a local agency. The wage rates used will reflect the latest rates approved by the Washington State Department of Labor and Industries (L&I) and the U.S. Department of Labor. Refer to CFR 29 part 30 and RCW 39.12 and RCW 49.28.

The Federal Davis-Bacon Act predetermined minimum wage must be paid to all covered workers on federal aid projects exceeding \$2,000 that are located on a federally classified highway. The Davis-Bacon requirements do not apply to force account work performed by agency forces.

If a project is located on a federally classified minor collector or below and is funded through either the bridge (BR), safety (HES) or enhancement category, the project is not subject to the federal wage rate requirement only the State law.

The applicability of Davis-Bacon to a transportation enhancement project is dependent on the relationship or linkage of the project to a federal aid highway. If the project is "linked" to a federal aid highway based on proximity or impact (i.e., without the federal aid highway the project would not exist), then Davis-Bacon requirements apply. Examples of such projects include the removal of outdoor advertising, a wetland to filter highway drainage, etc.

If the project is not "linked" to a particular federal aid highway and is eligible based solely on function (i.e., a transportation facility, such as an independent bike path, the restoration of a railroad station, etc.), then the Davis-Bacon requirements do not apply. However, the Davis-Bacon requirements apply to all projects greater than \$2,000 that are physically located within the existing right-of-way of a federal aid highway, regardless of the transportation enhancement characteristics.

Another Davis-Bacon issue is the acceptability of using volunteer labor on transportation enhancement projects. The Department of Labor states in its *Field Operations Handbook* (Section 15): "There are no exceptions to Davis-Bacon coverage for volunteer labor unless an exception is specifically provided for in the particular Davis-Bacon Related Act under which the project funds are derived." The Davis-Bacon Related Act for the Federal Aid Highway Program (23 U.S.C. Section 113) is silent on this subject. Therefore, on transportation enhancement projects subject to Davis-Bacon coverage, a contractor or subcontractor may not use volunteer labor. On the other hand, a state highway or local government agency may use volunteer laborers under their direct control as a force account effort.

Local agencies that have phone access to the WSDOT mainframe computer in Olympia may access the Wage Rate data file. If a local agency is not "on line," wage rates can be requested through the Region Local Programs Engineer.

The effective date for state and federal rates is determined as follows:

- a. State Wage Rates. L&I will use the date that bids are due as the effective date for determining prevailing wages provided that the contract is awarded within 60 days after bids are due (RCW 39.12). If the contract is not awarded within 60 days after bids are due, L&I will determine the prevailing wage on the date the contract is awarded.
- b. Federal Wage Rates. This data is received from the USDOL in a document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts." Modifications are issued weekly by the USDOL. The effective date for federal wage rates is the date of notice in the Federal Register or the date on which written notice is received by WSDOT, whichever occurs first. All modifications on projects to which the determination applies are effective if published before contract award. The following are exceptions:

- The effective date for determining state prevailing wage rates shall be the date of bid opening. For contracts awarded more than six months after the bid opening date, the effective date for determining the wage rates shall be the award date.
- The effective date for determining federal prevailing wage rates shall be ten days prior to bid opening (or less if the engineer determines an addenda can be issued prior to bid opening). For contracts awarded more than 90 days after the bid opening date, the effective date for determining the wage rates shall be the award date.

Prior to bid opening, the local agency may contact the Support Systems Engineer in the Plans Branch of WSDOT at (360) 705-7455, to see if wage rates have changed or pending.

To minimize the possibility of out-of-date state and federal wage rates at the time of bid opening, the wage rates should be requested from the Region Local Programs Engineer seven days before the advertising date.

.22 Other Requirements.

- a. Form FHWA-1273. Each set of contract documents shall include Form FHWA-1273, "Required Contract Provisions, FHWA Construction Contracts," and such amendments that modify the FHWA-1273. Copies of the FHWA-1273 Form and amendments are available from the Region Local Programs Engineer.
- b. Affirmative Action. See Chapter 27, Equal Employment Opportunity and Training.

- c. DBE. In accordance with FHWA and WSDOT efforts to increase DBE (Disadvantaged Business Enterprises) participation in FHWA projects, WSDOT has developed a management-by-objective goal-setting process for DBE participation. For additional information, see Chapter 26, Disadvantaged Business Enterprises.
- d. "Buy-America" Requirements. Steel that is permanently incorporated into the project shall consist of American-made materials, as outlined in the *Standard Specifications*, Division 1-99, Section 1-06.5, and any required GSP.

The local agency must include a provision containing the "Buy-America" requirements in each contract. General Special Provisions similar to those now used by WSDOT can be used by the local agency. These general special provisions are included in the *WSDOT Amendments and General Special Provisions* publication.

- e. Traffic Control Plans. Traffic Control Plans (TCP) shall be consistent with Part VI of the MUTCD and shall be referenced in the contract documents.
- f. Justification for nonparticipating work items, if included in the contract (tied bids), must be approved by the local agency. Combining of bid items shall not increase the cost of the federally funded project.
- g. Justification for the use of agency-supplied materials must be documented by the local agency. The materials must have been produced by agency forces or acquired through competitive bidding. Material purchased from a sole source may be used only with justification by the CA Agency.
- h. No warranty requirement shall be approved which may place an undue obligation on the contractor for items or conditions over which the contractor has no control. Warranties/ guarantees shall not be included in federal aid projects or the bonds except as follows:

On NHS construction contracts a warranty can be included in the contract in accordance with the following: Warranty provisions shall be for a specific product or feature. Items of maintenance not eligible for federal participation shall not be covered. All warranty requirements and subsequent revisions shall be submitted to the WSDOT Region Local Programs Engineer and forwarded to FHWA for advance approval.

On non- NHS construction contracts a warranty can be included in the contract in accordance with the following: Warranty provisions shall be for a specific product or feature. Items of maintenance not eligible for federal participation shall not be covered. All warranty requirements other than product or feature, and subsequent revisions, shall be submitted to Region Local Programs Engineer for advance approval.

23 Local Ad and Award Projects. See Chapter 46.

.24 State Ad and Award Projects. See Chapter 45.

44.3 Document Requiring Professional Stamps

The following documents require a PE stamp upon completion. The Professional Engineer with responsible charge of the project will assure that appropriate engineering reports and documents are stamped in accordance with RCW 18.43.070. If a particular “Engineering Report or Document” is not listed, it is not necessarily exempt from the requirement.

In nearly all cases, the responsibility will rest with the agency or consultant PE, but if a WSDOT engineer has responsible charge of a particular item, they will also have the responsibility to stamp the appropriate document.

The list includes:

- Design Reports
- Right-of-Way Plans
- Type, Size, and Location Report
- Design Approval Report
- Design Decision Summary
- Plans, Specifications, and Estimates, including all plan sheets.
- Special Provisions
- Temporary Water Pollution Control Plan
- Plans for Falsework and Forms, normally the contractor’s responsibility
- Bridge Design Report
- As Built Plans
- Technical Change Orders
- Value Engineering Study Report
- Standards Deviation Request
- Emergency Contracts that contain the equivalent of PS&E documents

44.4 Contract Plans

For state ad-and-award projects, the plans should be prepared in accordance with the WSDOT *Plans Preparation Manual* (M 22-31). For local ad-and-award projects, there are no federal or state requirements for plan sheet size or guidelines for preparing contract plans.

For both state and local ad-and-award projects, the plans shall carry the seal and signature of a registered Professional Engineer, in accordance with RCW 18.43.070.

44.5 Specifications

WSDOT publishes and distributes the *Standard Specifications*, and the *Amendments and General Special Provisions*.

.51 Standard Specifications. All FHWA funded projects, including local agency force projects, will be constructed in conformance with the current combined WSDOT and APWA *Standard Specifications for Road, Bridge, and Municipal Construction*, and such amendments that modify these specifications.

.52 Amendment to the Standard Specifications. These amendments are approved changes to the *Standard Specifications*.

.53 General Special Provisions. These are specifications that describe special project features in common usage.

.54 APWA Amendments. These are specifications unique to local agency projects. See *Standard Specifications* APWA Supplement 1-99.

.55 Special Provisions. Since Special Provisions are specifications governing matters peculiar to an individual project, they are not covered in the *Standard Specifications*. Their use should be held to a minimum and applicable *Standard Specifications* should be used instead. Issues mandated in the state and federal laws shall not be changed.

Special Provisions are required:

- a. For the presentation of all features of a project not covered by the *Standard Specifications* and *General Special Provisions*.
- b. Where the *Standard Specifications* are being amended.
- c. For any deviation from the *Standard Specifications* with regard to materials, construction details, measurement, and payment.
- d. When noted in the WSDOT Standard Item Table.

The following paragraphs discuss some pertinent aspects of special provisions.

- All nonstandard pay items shall be covered in the Special Provisions.
- For high cost and major projects, the local agency is encouraged to include a value engineering incentive clause in their construction specifications encouraging the contractor to propose changes in contract requirements that will accomplish the project’s functional requirements at less cost.
- Traffic control must be in accordance with the MUTCD. A Special Provision shall be prepared outlining traffic control requirements and including any pay items.
- Neatline measurement of quantities is allowed by special provision. This specification may allow payment of the neatline measurement from the lines and grades as shown on the plans or as directed by the Engineer’s stakes on the ground. This may apply to aggregates, base course, and surfacing. On asphalt quantities, the unit price could include the cost of coring to verify density and depths. Culvert and

pipeline installation may be paid by the lineal foot-in-place with bedding, backfill, and compaction as incidental to the unit price. In these instances, an item should be added for extra excavation or backfill if the profile varies or is subject to change during the contract. Shoring must be paid as a separate bid item.

- Direct reference to proprietary specifications of national, regional, or local trade associations should not be included in FHWA contract specifications; such proprietary specifications are subject to change without notice to, or acceptance by, the state or FHWA. If proprietary specifications must be used, the complete text, or such parts as are applicable, should be incorporated into special provisions for the project.

Proprietary Items

The use of trade names in specifications and on plans should be avoided. Instead, specifications should be formulated to assure full opportunity for competition among equivalent materials, equipment, and methods. Specifying patented or proprietary material, products or processes is allowed for federal-aid projects only under one of the following conditions:

- At least three names of acceptable materials or products, if available, are listed together with “an approved non-patented equal”, or
- The agency is requiring a specific material or product and a written Public Interest Finding (PIF) document has been prepared, or
- The material or product has been approved through FHWA as an experimental feature

Public Interest Finding

An agency may require a specific material or product when there are other acceptable materials and products when such specific choice is approved as being in the public interest, such as traffic signal control equipment. The written (PIF) must:

Clearly show that the best interest of the public and the agency will be achieved. This is accomplished by describing any cost effectiveness and efficiency to be realized. A benefit cost analysis should be completed to support the PIF. The supporting documentation and the decision of the CA agency must be maintained in the project file.

A PIF is not required when:

1. The funding source is from a municipality or other entity, and is not reimbursable with federal monies, including when the contract has tied bids, and the item is only part of the locally funded project.
2. A utility agreement is being established and there are minor quantities of materials and supplies and proprietary products that are routinely used in a utility’s operation, which are essential for the maintenance of the system.

See section 14.24(g) for approval requirements.

44.6 Estimates

The engineer’s estimate of a proposed project’s cost shall include the estimated quantity and estimated unit price for each proposed work item. Bridge items shall be segregated from roadway items. A tabulation for each bridge showing its applicable items shall be submitted.

If materials salvaged from the project are to be used for roadway purposes, the value of such materials should not be included in the project cost.

The estimate shall separately list the costs of nonparticipating items, local agency force work, and local agency furnished materials.

The separate cost groups shall be summarized and totaled on the first sheet of the estimate.

The Region Local Programs Engineer may be contacted for assistance in preparing the estimate. A sample estimate is shown in Appendix 44.76.

44.7 Appendixes

- 44.72 Sample Proposal (Metric/English)
- 44.73 Sample Contract
- 44.74 Sample City Letter of Financial Responsibility
- 44.75 Sample County Letter of Financial Responsibility
- 44.76 Sample Estimate and Grouping (Metric/English)
- 44.77 Permits
- 44.78 Local Agency Plans Preparation Checklist
- 44.79 Subcontractor List
- 44.80 Disadvantaged Business Enterprise Utilization Certification

Forms

FHWA Form 1273 Required Contract Provisions, FHWA Construction Contracts

FHWA Form LLL Disclosure of Lobbying Activities

DOT Form 272-006A Contract

DOT Form 272-036D Proposal

DOT Form 272-036H Non-Collusion Declaration

This chapter is used by local agencies operating under Certification Acceptance (Chapter 13) and choosing to advertise and award construction contracts themselves. Chapter 52, Local Administered Projects, will also apply to these agencies.

Local agencies wanting to have the Washington State Department of Transportation (WSDOT) to administer their construction contracts should refer to Chapter 51, WSDOT Administered Projects.

46.1 General Discussion

Local agencies may let contracts for their projects provided that the following conditions are met:

- .11 The local agency uses the advertising and award procedures outlined in this section to advertise for bids, select the lowest responsible bidder, and award the contract.
- .12 A Local Agency Agreement between the state and local agency is in effect setting forth the conditions under which the project will be constructed.
- .13 The local agency is participating in the cost of the project or has other special interests in it.
- .14 The local agency is certified for project administration in accordance with Chapter 13, Becoming Certified to Administer FHWA Projects.

No project can be advertised until the local agency has completed the following:

- Approved the PS & E
- The environmental document is approved.
- The project's right of way has been certified.
- Project Disadvantaged Business Enterprise (DBE) goals have been established.
- Construction funds have authorized by the Director of Highways and Local Programs.
- A contract number has been obtained from the Region Local Programs Engineer.

46.2 Procedures

The Region Local Programs Engineer will monitor local agency compliance with the following procedures for bid advertising and processing of projects.

- .21 **Funding.** A Local Agency Agreement and construction funds must be authorized by the Director of Highways and Local Programs before a contract is advertised.
- .22 **Bidding Procedures.** The local agency is prohibited from establishing any procedures or requirements for qualification or licensing of contractors, which prevents the submission of bids or prohibits consideration of bids submitted by any responsible contractor, whether resident or nonresident of the state, except as outlined below.

The prequalification of prospective bidders is the responsibility of the local agency. WSDOT will not prequalify prospective bidders for local agency projects. A local agency may at its option use the WSDOT prequalification procedure specified in the WSDOT/ APWA *Standard Specifications*. When an agency does not prequalify prospective bidders, they should afford 10 days after notification for the low bidder to provide evidence of capability to perform the work. The evaluation of capability should include consideration of experience, personnel, equipment, financial resources, and performance record; the information should be sufficient to enable the bidder to obtain the required qualification rating prior to the contract award.

Qualification must, as a minimum, consist of bonding capability as required by state law and compliance with licensing requirements of state law. The local agency may include additional requirements.

When an agency is considering tied bids, the tied projects must be open to bid by disadvantaged business enterprises (DBEs). Specialized contracts such as fencing, landscaping, concrete work, etc., should be considered to permit maximum opportunity for disadvantaged business enterprises.

When the DBE participation goal is included in the contract provisions, meeting the goal is part of the bidding requirements, as explained in Chapter 26, Disadvantaged Business Enterprises, and Chapter 44, Plans, Specifications, and Estimates.

For all FHWA projects, bidding opportunities, on a nondiscriminatory basis, shall be afforded to all qualified bidders regardless of state boundaries, race, sex, color, or national origin.

No bidder shall be disqualified or prevented from competitive bidding by restricting the purchase of a surety bond or insurance policy from any surety or insurer outside the state and authorized to do business with the state.

- .23 **Preparation of the Project Proposal.** See WSDOT/ APWA *Standard Specification* 1.02.6.

- .24 **Advertising of the Project.** FHWA projects previously approved should be advertised for a three-week period prior to opening of bids. The three-week advertising period begins when the first of two advertisements is published. If an agency wants an advertising period of less than three weeks, documentation by the CA local agency for the shorter period must be in the project file. Examples of shorter advertising periods are as follows:

- Emergency correction of roadways or bridges.
- To meet the conditions of a fisheries permit.

The project will be advertised in the official legal publication for the agency and, if necessary, other newspapers to provide the widest possible, coverage commensurate with the size of the project. Affidavits of publication must be the project file.

The local agency will comply with the standard USDOT Title VI Assurances by inclusion of the following language in the solicitations for bids:

“The (Local Agency) in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d to 2000-4 and Title 49, Code of Federal Regulations, Department of Transportation, subtitle A, Office of the Secretary, Part 21, nondiscrimination in federally assisted programs of the Department of Transportation issued pursuant to such Act, hereby notifies all bidders that it will affirmatively insure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color or national origin in consideration for an award.”

Should an addendum be necessary during the advertising period to correct or add something to the bid or plan data, such addenda shall be approved by the CA local agency prior to transmittal to the individual contractors holding the plans, specifications, and bid document data. Each bidder shall present with their bid written notice of their receipt of each addendum received.

.25 Bid Opening. All bids received in accordance with the terms of the advertisement shall be publicly opened and announced, either item by item or by total amount.

If any bid received is not read, the name of the bidder and the reason for not reading the bid shall be publicly announced at the bid opening.

Adequate justification for rejecting any bids must be documented by the local agency.

.26 Evaluation Bids for Award. The local agency shall verify that all required bid documents have been properly submitted and executed by all bidders. All bids are then reviewed for accuracy, unbalancing of bid items, etc., and tabulations checked and confirmed. Any corrections to the bid tabulations are made, if necessary, in accordance with the WSDOT/APWA Standard Specifications, Section 1-02 and 1-03.

In order for a bid to be considered responsive, a bid deposit of at least 5 percent of the total bid proposal must accompany each bid. In accordance with Section 1-02.7 of the Standard Specifications, the Proposal Bond shall not be conditioned in any way to modify the minimum 5 percent required.

When there is a specified DBE goal for the project, the successful bidder will be selected on the basis of having submitted: (1) the lowest responsive bid which has met the DBE goal; or (2) when the DBE participation is less than the specified goal, responsiveness will be determined on the basis of good faith efforts to attain the goal.

When the Special Provisions contain an incentive clause encouraging the contractor to propose changes to accomplish the project's functional requirements at less cost, and the successful bidder has used this option, the proposed changes would be carefully studied and a justification prepared supporting or not supporting the changes.

The local agency shall prepare a tabulation of bids showing the item details for at least the three lowest acceptable bids.

The local agency shall document the reason(s) for rejecting the low bid and may reject all bids for any reason(s).

Reasons for justifying an unusual award:

- Where the competition is good; or
- Where the project is essential to the public interest (safety, emergency repair, etc.); or
- Where the engineer's estimate is clearly in error to a significant amount; or
- Where advertising again would likely result in higher bids.

If the local agency determines that the lowest bidder is not qualified, it shall document those findings prior to awarding the bid to the next-lowest responsible bidder.

The Local Agency Agreement must be supplemented if any overrun or underrun occurs beyond the authorized amount. See Section 22.3.

One originally signed Supplemental Agreement form must be submitted to the Regional Highways and Local Programs Engineer. This supplemental agreement form will be retained by WSDOT. It is the responsibility of the local agency to submit an additional supplemental agreement form or copy if they need an executed supplemental agreement for their files.

.27 Award of Contract. After bids have been tabulated and evaluated in accordance with the procedures described above, the construction contract may be awarded to the lowest responsive bidder.

After award by the local agency, the contractor must be advised of the award in writing. For an example of an award letter for a contract that has an identified DBE goal, see Appendix 46.42. The second, third, fourth, and fifth paragraphs must be included in the local agency letter. An award letter for contracts without a DBE goal can be similar but would not include the second, third, fourth, and fifth paragraphs.

- .28 Execution of Contract.** Local agencies shall not execute a contract with any contractor who is not registered or licensed in accordance with state laws.

The local agency prepares the necessary documents and forwards them for execution by the successful bidder and the proper officials of the local agency.

A sample of a standard contract agreement is in Appendix 44.63. The Regional Highways and Local Programs Engineers can furnish these standard forms upon request.

46.3 Submittal of Award Data

Before construction begins, the local agency **must** submit the following information to the Region Local Programs Engineer:

- Tabulation of bids
- Engineer's estimate
- Award letter to the contractor
- Names and addresses of all firms that submit a quote to the successful low bidder
- DBE utilization certification, Form 272-056A (if applicable)
- The estimated completion date or the number of working days for the contract
- Failure to submit the above listed information, before construction begins, will result in a delay of reimbursement for the billed cost, until the information is received.

46.4 Appendixes

46.41 Sample Request for Concurrence to Award

46.41a Sample Advertisement

46.42 Sample Condition of Award Letter
(DBE Contract Goals)

46.43 Sample Condition of Award Letter
(DBE Prime Contractor)

46.44 Sample Contract Bond

Project Title _____ FHWA Project No. _____

Attached are the following required documents plus any additional information that may be applicable:

_____ Bid proposal from the lowest responsible bidder.

_____ Bid bond.

_____ Noncollusion Plan Certification.

_____ DBE Certification (if required).

_____ Tabulation of Bids.

_____ FHWA cost breakdown showing total project cost, FHWA participation and Local Agency participation.

_____ Additional documents.

Date

Local Agency Engineer

Date

Approving Authority

**INVITATION TO BID
LOCAL AGENCY'S LETTERHEAD
DEPARTMENT OF ENGINEERING
WASHINGTON**

Sealed bids will be received by the (Local Agency), at the reception desk located in Room _____ of the _____, Washington until _____ a.m. on _____ and will then and there be opened and publicly read for the construction of the improvement(s).

All bid proposals shall be accompanied by a bid proposal deposit in cash, certified check, cashier's check, or surety bond in an amount equal to five percent (5%) of the amount of such bid proposal. Should the successful bidder fail to enter into such contract and furnish satisfactory performance bond within the time stated in the specifications, the bid proposal deposit shall be forfeited to the (Local Agency).

The right is reserved to reject any and all bids and to waive informalities in the bidding.

Maps, plans, and specifications may be obtained from this office upon payment of the amount of \$_____.

Informational copies of maps, plans and specifications are on file for inspection in the Office of the Local Agency Engineer, (Local Agency), Washington.

The following is applicable to federal aid projects.

The (Local Agency) in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d to 2000-4 and Title 49, Code of Federal Regulations, Department of Transportation, subtitle A, Office of the Secretary, Part 21, nondiscrimination in federally assisted programs of the Department of Transportation issued pursuant to such Act, hereby notifies all bidders that it will affirmatively insure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color or national origin in consideration for an award.

The improvement for which bids will be received is described below:

Bid Opening of

*This bolded paragraph cannot be reworded for FHWA funded projects.

This chapter is used for non-NHS routes by local agencies operating under Certification Acceptance and choosing to administer construction contracts themselves. In the sequence of project development, this follows Chapter 46, Local Advertising and Award Procedures. For NHS routes, refer to Chapter 63, NHS Projects.

Local agencies whose construction contracts are administered by the Washington State Department of Transportation (WSDOT) should refer to Chapter 51, WSDOT Administered Projects.

The following chart illustrates the contract administration and oversight responsibilities for the Federal Highway Administration (FHWA) (F), WSDOT (S), and local CA agencies(L):

Action	Local	
	CA non-NHS	non-CA Agency non-NHS
a. Construction Fund Auth.	F	F
b. Changes/Extra Work/ Nonparticipation	L	S/L
c. Claims	L	S/L
d. Project Inspections	L	S/L
e. Final Inspection	S	S
f. Final Acceptance	S	S

52.1 General Discussion

WSDOT is responsible for the proper expenditure of FHWA funds on local agency projects. Highways and Local Programs will consult and work with local agencies as needed and will perform systematic project management reviews to ensure that proper procedures are followed.

Except for transportation enhancement projects, construction will be administered and materials will be inspected in accordance with the WSDOT *Construction Manual* and this chapter of the LAG. For exceptions, see Section 52.32. In case of conflicting guidelines, this chapter governs the *Construction Manual*. FHWA projects are subject to EEO and DBE compliance reviews by WSDOT. Refer to Chapter 62, Enhancement Projects, and Chapter 63, NHS Projects, for criteria governing construction of NHS and enhancement projects.

Appendix 52.95 illustrates the major timeline for construction contracts and provides more details for specification references.

52.2 Preconstruction Conference

After a contract is awarded, the Local Agency should arrange a conference with the contractor. The Local Agency Engineer shall notify the Regional Highways and Local Programs Engineer of the time and place of the conference.

On large, complex projects, a preconstruction conference should be held before each construction phase. It may be desirable to hold separate conferences for some specialized construction items such as paving, roadside planting, or electrical work. The preconstruction conference may include a partnering session if appropriate. For a sample conference agenda, refer to Appendix 52.91.

The meeting should be documented and copies of the minutes transmitted to the Regional Highways and Local Programs Engineer and each agency, organization, and firm that has involvement or interest in the project (see Appendix 52.92).

52.3 Quality Control

The quality of materials and workmanship on a project must conform to the contract specifications so that the public funds expended will have purchased a safe, economical, and fully functional transportation facility.

.31 General. The source for each type of material must be approved by the local agency.

The Qualified Products List (QPL) is compiled by WSDOT Materials Laboratory Documentation Section and published by WSDOT Engineering Publications. The QPL is available in hard copy or can be accessed on the internet at: <http://www.wsdot.wa.gov/fossc/mats/QPL/QPL.cfm>. Upon request, the Region Local Programs Engineer will provide a hard copy of the QPL.

Local agencies requesting a Record of Materials (ROM) from WSDOT's Materials Laboratory should submit their request at the time of award to avoid delaying the contractor. The average processing time is approximately four weeks.

Reimbursement of FHWA funds may be denied for work done contrary to or in disregard of the contract documents.

Local agencies making improvements to National Highway System (NHS) routes with **federal funding** must comply with WSDOT's qualified tester program. If a local agency is not certified to perform the tests, they can contact their Local Programs Engineer to make arrangements for WSDOT or a qualified testing laboratory to perform the testing on the project.

.32 Exceptions to qualified tester program. Local agencies making improvements to the traveled lanes of the National Highway System (NHS) with federal funding must comply with WSDOT's qualified tester program. Projects that cross or connect to an NHS route may be exempted by the Regional Local Programs Engineer from these requirements when quantities within the NHS travel lanes are minor. For projects with other than minor quantities, a local agency must comply with the program. If a local

agency is not certified to perform the tests, they can contact a qualified testing laboratory or their Regional Local Programs Engineer to make arrangements for WSDOT to perform the testing on the project.

- .33 Exceptions to the WSDOT Construction Manual.** The following exceptions to the WSDOT *Construction Manual* may be used by the local agency, in developing a plan for construction oversight. The agency may submit their plan through the Regional Highways and Local Programs Engineer for review and comment by the Highways and Local Programs Operations Engineer. If these methods are not utilized, the WSDOT *Construction Manual* shall prevail.

The following procedures are approved exceptions to the *Construction Manual* requirements:

- The local agency may develop their own Record of Materials, and approve manufacturers not listed on the approved WSDOT manufacturers list.
 - Asphalt plant inspectors and scalepersons are not required at established commercial sources. This exception does not allow the agency to eliminate acceptance sampling of the materials.
 - Local agencies must use acceptance and assurance sampling and testing procedures. Acceptance and assurance testing shall be independent of each other, not utilizing the same testing equipment or performed by the same personnel. (See September 2002 Engineering Publications CD LAG Manual/2000 Materials or <http://www.wsdot.wa.gov/TA/Operations/LAG/2000Materials.pdf>)
 - The following items may be accepted with an approved catalogue cut and documented by visual inspection or a manufacturer's material certification (provided manufacturer's certification is based on actual testing):
 - Electrical items
 - Paving or geotextile fabrics
 - Fencing of any kind
 - Landscaping or irrigation items
 - Glare screens
 - Traffic buttons or paints
 - Guardrail items
 - Drainage items
 - Minor quantity aggregate items from an established commercial source, treated or untreated, with a current testing frequency less than 500 tons, (450 tonnes) may be increased to 500 tons (450 tonnes) and can be accepted without testing
 - Local agencies may test their own signal cabinets.
- Local agencies may lower the density testing requirements to 90 percent of the rice density for nonstructural overlay pavement designs with a thickness of 1.25 to 2 inches (30 to 50 mm). This should be limited to areas or projects with documented foundation problems and on overlay of existing pavements.
 - Local agencies are not required to follow the qualified testing program outlined in the WSDOT *Construction Manual* if the agencies projects are:
 - Projects not on the NHS
 - Projects on the NHS that **do not** contain federal funding.

52.4 Progress Payments

Progress payments must be based on measurements of work performed so that the contractor can be fairly compensated and so that public funds will not be expended on work that has not been done.

- .41 General.** Progress estimates should be prepared on a preselected date each month.

The Local Agency shall document the quantities paid each month.

Progress estimates should be prepared promptly and may be forwarded to the contractor for review and signature.

- .42 Statement of Intent to Pay Prevailing Wages.** The contractor and subcontractors of every tier shall submit form LI 700-29 to L&I for approval of the wage rates they intend to pay. Each statement must be accompanied by the filing fee established by L&I (required by RCW 39.12.030 and 040).

The approved pink copy of form LI 700-29 shall be on file with the local agency before any payment is made to the contractor. Subcontractors of every tier shall have an approved copy of this form on file with the local agency before any payment can be made for their work.

52.5 Changes and Extra Work

Prior to beginning work, an agency should have a written policy for the approval of change orders to ensure that approval, either verbal or written, is given and documented.

It is important to distinguish between actual changes to the contract work and normal overruns and underruns that may occur. Whenever a change in the contract is required, the agency shall prepare a change order. The change order shall include an explanation in sufficient detail so that everyone involved will understand the need for the change. The explanation shall include a detailed justification of the cost associated with the change. All change orders must be numbered in sequence.

To be eligible for FHWA participation, all change orders must be approved by the Local Agency. No change order work shall be done prior to approval. In the case of emergency situations,

verbal approval may suffice. Verbal approval must be followed by submission of the corresponding change order within ten calendar days.

When changes in the work will alter the termini, character, and scope of an approved project, approval of the Assistant Secretary for Highways and Local Programs is required prior to the commencement of the physical work. Refer to Chapter 21, The Project Prospectus, for further information.

.51 Administrative Settlement Costs. Administrative settlement costs are costs related to the defense and settlement of contract claims including, but not limited to, salaries of contracting officers or their authorized representatives, attorneys or members of arbitration boards, appeal boards, etc., which are allowable to the findings and determination of contract claims, but not including administrative or overhead costs.

FHWA funds may participate in administrative settlement costs which are:

- Incurred after notice of claim.
- Properly supported.
- Directly allocable to a specific FHWA project.
- For employment of special counsel for review and defense of contract claims when recommended by the agency's legal counsel and approved in advance by WSDOT.

When a claim is submitted, the Regional Highways and Local Programs Engineer should be contacted for advice on how to proceed.

52.6 Termination of Contract

Section 1-08.10 of the Standard Specifications, Termination of Contract, contains procedures and criteria for termination of a contract.

52.7 Compliance With Federal Contract Provisions

FHWA requires that all subcontracts at any tier be in writing, per 23 CFR, Section 635.116(b). This includes contracts between the prime contractor and their subcontractors, and contracts between subcontractors and their agents.

Each of these subcontracts also must physically contain the following documents, none of these documents can be included by reference only.

- The general special provision (GSP) entitled "Required Federal Aid Provisions,"
- Form FHWA 1273 "Required Contract Provisions Federal Aid Construction Contracts," and
- The minimum wage rates for the contract as required by RCW 39.12 and Title 29 of the Code of Federal Regulations.

It is the responsibility of the local agency to ensure full compliance with the provisions above.

Implementation of the DBE and EEO programs are also federal contract requirements. Refer to Chapter 26, Disadvantaged Business Enterprises, and Chapter 27, Equal Employment Opportunity and Training.

52.8 Physical Completion of Construction

The local agency will carry out the following requirements to terminate the construction contract and ready the project for acceptance by WSDOT and FHWA:

.81 Notice of Physical Completion. Within 10 calendar days after physical completion of the work by the contractor, the Local Agency Project Engineer shall notify the contractor by letter that the construction is physically complete, and the project is subject to inspection, audit, and acceptance by the state. The agency shall diligently pursue closure of the contract.

.82 Final Inspection. The Local Agency Project Engineer shall send a request for WSDOT inspection and acceptance to the Regional Highways and Local Programs Engineer within 15 days of physical completion of work by the contractor. A copy of the physical completion letter that was sent to the contractor should accompany the request.

.83 Final Reports. A construction project is considered complete when the items listed below have been completed. All certifications and reports shall be retained for at least three years after final acceptance of the project.

- a. Final Estimate (Approving Authority File). When the contractor has a claim pending against the local agency and wants to receive a final estimate, a claim must be submitted by letter detailing specific items and amounts. (When a claim is submitted, immediately contact the Regional Highways and Local Programs Engineer so FHWA can be informed of the claim's details at an early stage. See Section 1-09.12(2) of the WSDOT/APWA *Standard Specifications*.)
- b. Comparison of Preliminary and Final Quantities (Approving Authority File). A listing of items showing the preliminary and final quantities.
- c. Certified Final Bill for Utility Agreement, if applicable, to Regional Highways and Local Programs Engineer.
- d. Final Records (Approving Authority File). The Local Agency Project Engineer must document the work performed on the contract. Documentation consists of field books, inspector's record of field tests, Project Engineer's and inspector's diaries, all invoices, weigh bills, truck measurements, quantity tickets, receiving reports, field office ledgers, mass diagrams, cross-sections, computer listings, and work profiles. Photographs or video tapes before, during, and after

construction could be useful, especially if care is taken to show any unusual conditions, equipment, or procedures.

Final records shall be retained by the local agency for at least three years following acceptance of the project by WSDOT Highways and Local Programs. The local agency will receive from the Assistant Secretary for Highways and Local Programs the administrative review letter showing the starting and ending date of the three-year retention period (OMB Circular A-128).

- e. Record of Material Samples and Tests.
- f. Materials Certification (Appendix 52.94). The intent of the materials certification is to assure that the quality of all materials incorporated into the project is in conformance with the plans and specifications and thus ensure a service life equivalent to the design life.

This materials certification shall be completed in accordance with Section 9-1.5 of the *Construction Manual* or Chapter 52.3 of the *LAG* manual and is submitted along with the completion letter to the Regional Highways and Local Programs Engineer.

- g. Affidavit of Wages Paid. Upon completion of a contract, the prime contractor and every subcontractor or agent shall submit Form LI-700-7, "Affidavit of Wages Paid," to L&I for certification of the wage rates paid on the project. Each affidavit must be accompanied by the filing fee established by L&I.

Local agencies are required to retain a percentage of money earned by the contractor according to the provisions of RCW 60.28.011. An L&I-certified copy of Form LI-700-7 from the prime contractor and every subcontractor or agent must be on file with the local agency before the retained sum will be released.

- h. Release for the Protection of Property Owner and General Contractor. Upon completion of the contract, Form LI-263-83, furnished by L&I, shall be properly executed by the prime contractor and submitted to L&I. When L&I, based on its records, has verified that the industrial insurance and medical-aid premiums have been paid by the prime contractor and every subcontractor, a statement to that effect will be issued by the L&I contract release clerk. A copy of this statement must be on file with the local agency before the retained percentage can be released.
- i. WSDOT Form 422-102, "Quarterly Reports of Amounts Credited as DBE Participation," shall be submitted by the contractor to the local agency on all projects that contain DBE goals. This form should also be submitted when a qualified DBE contractor or subcontractor is employed on a project, regardless of whether that DBE is a condition of award or not. This form is submitted on a quarterly basis in January, April, July, and October. (See Chapter 26, Disadvantaged Business Enterprises.)

.84 Project Acceptance. The approving authority's approval of the final estimate will be considered as the local agency's acceptance of the project.

52.9 Appendixes

- 52.91 Sample Preconstruction Conference Agenda
- 52.92 Sample Preconstruction Conference Minutes
- 52.93 Sample Letter Requesting WSDOT Project Inspection and Acceptance
- 52.94 Sample Materials Certification
- 52.95 Timeline for Construction Contracts
- 52.96 Weekly Statement of Working Days
- 52.97 Change Order

Forms

See Chapter 11 of the WSDOT *Construction Manual*.

FHWA Form WH-347

Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

[illegible]

We estimate that it will take an average of 56 minutes to complete this collection of information, including time for reviewing instructions searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding these estimates or any other aspect of this collection of information, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, ESA, U. S. Department of Labor, Room S3502, 200 Constitution Avenue, N. W., Washington, D. C. 20210.

Date _____

I, _____, _____, _____ (Name of Signatory Party) _____ (Title)

do hereby state:

(1) That I pay or supervise the payment of the persons employed by _____

_____ (Contractor or Subcontractor) _____ on the _____

_____ (Building or Work); that during the payroll period commencing on the _____

_____ day of _____, _____, and ending the _____ day of _____, _____, all persons employed on said project have been paid the full weekly wages earned, that no rebates have been or will be made either directly or indirectly to or on behalf of said _____

_____ (Contractor or Subcontractor) from the full _____

weekly wages earned by any person and that no deductions have been made either directly or indirectly from the full wages earned by any person, other than permissible deductions as defined in Regulations, Part 3 (29 CFR Subtitle A), issued by the Secretary of Labor under the Copeland Act, as amended (48 Stat. 948, 63 Stat. 108, 72 Stat. 967; 76 Stat. 357; 40 U.S.C. 276c), and described below:

(2) That any payrolls otherwise under this contract required to be submitted for the above period are correct and complete; that the wage rates for laborers or mechanics contained therein are not less than the applicable wage rates contained in any wage determination incorporated into the contract; that the classifications set forth therein for each laborer or mechanic conform with the work he performed.

(3) That any apprentices employed in the above period are duly registered in a bona fide apprenticeship program registered with a State apprenticeship agency recognized by the Bureau of Apprenticeship and Training, United States Department of Labor, or if no such recognized agency exists in a State, are registered with the Bureau of Apprenticeship and Training, United States Department of Labor.

(4) That:

(a) WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLANS, FUNDS, OR PROGRAMS

☐ — in addition to the basic hourly wage rates paid to each laborer or mechanic listed in the above referenced payroll, payments of fringe benefits as listed in the contract have been or will be made to appropriate programs for the benefit of such employees, except as noted in Section 4(c) below.

(b) WHERE FRINGE BENEFITS ARE PAID IN CASH

☐ — Each laborer or mechanic listed in the above referenced payroll has been paid, as indicated on the payroll, an amount not less than the sum of the applicable basic hourly wage rate plus the amount of the required fringe benefits as listed in the contract, except as noted in Section 4(c) below.

(c) EXCEPTIONS

EXCEPTION (CRAFT)	EXPLANATION
REMARKS:	

NAME AND TITLE	SIGNATURE
THE WILLFUL FALSIFICATION OF ANY OF THE ABOVE STATEMENTS MAY SUBJECT THE CONTRACTOR OR SUBCONTRACTOR TO CIVIL OR CRIMINAL PROSECUTION. SEE SECTION 1001 OF TITLE 18 AND SECTION 231 OF TITLE 31 OF THE UNITED STATES CODE.	

63.1 General Discussion

This chapter addresses criteria to be used on projects on the National Highway System (NHS) routes. The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) established a major new federal aid system, the NHS.

Although ISTEA provided that certain key routes, such as the Interstate Highway System, be included in NHS, most of NHS was not specified. The Secretary of Transportation of USDOT was directed by Congress to develop the NHS in cooperation with the states and local areas. In 1995, Congress approved the system. According to the Federal Highway Administration (FHWA), the NHS “is the centerpiece of the newly structured federal aid highway program.” The NHS includes the interstate system; other routes identified for their strategic defense characteristics; routes providing access to major ports, airports, public transportation, and intermodal transportation facilities; and principal arterials that provide regional service.

The NHS that was developed by the Washington State Department of Transportation (WSDOT) Planning and Programming Service Center in cooperation with local and regional officials based on guidelines established by the U.S. Secretary of Transportation and on the functional reclassification (see Section 12.36). The NHS in Washington has about 3,384 miles.

Although a part of the NHS, the Interstate System retains its separate identity and receives separate funding. The local agency mileage on the NHS, by agency, is listed in Appendix 63.81.

63.2 Types of Eligible Projects

These include construction, rehabilitation, resurfacing, restoration, and operational improvements for highways, highway safety improvements, highway related technology transfer activities, and carpool and vanpool projects.

63.3 Standards

Local agencies making improvements to NHS routes **with federal funding**, must comply with WSDOT’s qualified tester program. Refer to Chapter 52, Section 52.31, for requirements.

Design and construction standards for all new construction or reconstruction projects and for all 3R multi-lane limited access projects on the NHS shall meet or exceed AASHTO standards in accordance with Title 23 USC, Section 109(b) and Section 109(c). For other projects on the NHS, the currently approved standards stipulated in the WSDOT Design, Construction, and LAG manuals, as applicable or subsequent approved revisions will be met.

For 3R NHS projects, on other than multi-lane limited access facilities, regardless of funding, the minimum design standards will be Section 430 WSDOT *Design Manual* (M 22-01) Standards or approved revisions.

These standards are applicable for both WSDOT administered and local agency administered (through WSDOT) projects. FHWA will be notified promptly of all policy changes in these manuals, laws, regulations, or directives affecting FHWA projects.

63.4 NHS Certification Acceptance

All local agency NHS projects will be administered under Certification Acceptance (CA) procedures, regardless of federal funding source, except for certain high cost or unique bridge projects.

63.5 Projects Within Interstate Rights-of-Way

Since all projects within the Interstate rights-of-way (R/W) have the potential to impact safety and operations on the Interstate route, local agencies must incorporate Interstate design criteria and construction quality. It is the Federal Highway Administration’s (FHWA) policy that all projects within the Interstate R/W should be administered by WSDOT. However, given the scope and extent of non-Interstate projects within the Interstate R/W, it is recognized that local agency administration of some projects may be acceptable, and all requests will be considered on a case-by-case basis.

Whenever a local agency proposes a project within the Interstate R/W, the local agency must develop an agreement with WSDOT that clearly outlines each others duties and responsibilities to maintain the integrity of the Interstate facility, from both the safety and quality perspectives. The agreement should be executed prior to design approval and must be executed prior to advertising for bids. The following requirements must be incorporated into the agreement:

Responsibilities: WSDOT and the local agency must each assign a responsible Project Engineer.

Design: WSDOT must review and approve all highway plans, profiles, deviations, structural plans, false-work plans, shoring plans, and traffic control plans for any work within the Interstate R/W.

Plans, specifications, and estimates: WSDOT must review and approve the plans and specifications for any work within Interstate R/W.

Advertising and award: The local agency must confer with the WSDOT Project Engineer on any pre-award issues affecting the quality and timing of the contract.

Construction: All construction, materials, and quality control requirements contained in the current editions of the WSDOT Standard Specifications and Construction Manual must be incorporated into the agreement.

Contract changes: All contract changes affecting work within the Interstate R/W must have the prior concurrence of the WSDOT Project Engineer.

Final Inspection: The final inspection of the project must be performed by WSDOT Olympia Service Center or the Region Construction (Operations) Engineer and must evidence their approval.

Only local agencies with full certification acceptance authority may enter into such an agreement with the WSDOT.

The agreement must be submitted to FHWA prior to construction. FHWA reserves the right to assume full oversight of the project.

63.6 Project Approval Actions

In accordance with Title 23 and the Stewardship Agreement, the oversight option which applies to Federal-aid highway projects on local agency routes is Certification Acceptance procedures (NHS off the Interstate system and Non-NHS projects). For these procedures, the following chart establishes the contract administration and oversight responsibilities for the FHWA (F), the WSDOT (S), and Local CA Agencies (L):

	Local CA NHS
Construction Fund Auth.	F
Changes/Extra Work/ Non-participation	L
Claims	L
Project Inspections	L
Final Inspection	S
Final Acceptance	S
PR/PE	F

Title 23 USC and 23 CFR provisions apply to all NHS Federal aid projects regardless of federal funding source or approval authority. State standards may be used on non-NHS projects, except for federal requirements pertaining to contracts (bid proposal content including Davis Bacon and DBE) and procurement procedures (competitive bidding and Brooks Act).

63.7 NHS Components

About 118 miles of the NHS are not under WSDOT jurisdiction. Although the state has not included any future routes on NHS, certain routes will be advanced for the NHS later. These projects would be either extensions or realignments of existing NHS routes.

63.8 Appendixes

- 63.81 List of Local Agency NHS Routes
- 63.82 Local Agency NHS Route Terminii